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Supreme Court of the United States

OCTOBER TERM, 1906

NO. 280

COPPER QUEEN CONSOLIDATED MINING COMPANY, *Appellant*

vs.

THE TERRITORIAL BOARD OF EQUALIZATION OF THE TERRITORY OF ARIZONA

BRIEF FOR APPELLEES

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PRESS OF W. F. ROBERTS CO., WASHINGTON

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BRIEF FOR APPELLEES

This was a proceeding in certiorari commenced by petition filed by the appellant in the Supreme Court of the Territory of Arizona for the purpose of testing the validity of the action of the Territorial Board of Equalization in increasing, for the purpose of taxation for Territorial purposes for the year, 1905, the valuation of patented mines in certain counties in Arizona, in one of which (Cochise) are situated certain patented mines owned by the appellant as to which it is claimed such increase in valuation, if sustained, would result in increasing the tax thereon for said year more than $5,000. The petition also complains of the action of the appellees in increasing the

valuation of work horses and saddle horses, but the real controversy is over the increase in the valuation of patented mines,

Upon the petition being filed the writ of certiorari issued, but before the return day an amended petition was filed (R. pp. 7–11). On the following day the respondents (appellees here) filed a general demurrer to the petition (R. p. 6) which, under Arizona practice, subserves, in such case, the purposes of a motion to supersede upon the ground that the writ was issued improvidently. Thereafter the respondents filed a return (R. p. 11), certifying the record proceedings complained of (R. pp. 12–29), including the several abstracts of assessments furnished by the boards of supervisors or county boards of equalization of the several counties (R. pp. 30–55) as the basis of the respondents' action, and also the record of increases and decreases made by the Territorial Board of Equalization for each and every year, commencing with 1887 (R. pp. 55–60), showing that like action with respect to particular classes of property had been uniformly taken by the Territorial Board of Equalization prior to the action complained of.

In 1905, however, the Territorial Board of Equalization for the first time undertook to raise the valuation of patented mining property, which was the occasion of the present proceedings.

The case was considered by the court below, and is before this court, upon the demurrer to the petition and the return serves only the purpose of evidencing facts of which the court below took judicial notice and of which this court will take judicial notice.

The petition does not aver that by the action of the appellees complained of, mining property as a class has

been burdened with a valuation that is unreasonable or excessive, or that the property of the petitioner is thereby given a valuation that is unreasonable or excessive or even adequate. The contention of the appellant is solely and purely that the board has exceeded its power in two respects, first, in raising the valuation of patented mines as a class, and, second, in raising the sum of the aggregate valuations of property in the several counties as returned by the county boards of equalization.

The first point submitted for the consideration of the court is, therefore,

That the petition fails to show that the petitioner is injured by the action complained of.

The writ of certiorari will lie only where required to do substantial justice, and will never be granted where it has not been shown that the petitioner has suffered a substantial injury by the action complained of.

It is clear, and admitted by the appellant, that the board of equalization had the power to increase the aggregate valuation of taxable property in Cochise county, and in so doing had the power to increase the valuation of the petitioner's property in that county along with all of the other taxable property therein. So that, inasmuch as it is not contended that the valuation of the petitioner's property was raised beyond or even to its actual cash value, which is the statutory measure of valuation for taxation, it would seem that there has not been any injury done to the petitioner; but its whole contention is that, so far as the merits of the matter go, other classes of property have not been equally increased, on the one hand, and on the other, that the aggregate valuation of property

in some other county or counties has not been reduced in such measure as not to disturb the aggregate valuations of property in all the counties.

It would seem, therefore, that the petitioner has no substantial claim of injury and that the action of the appellees ought not to be reviewed at its instance in certiorari proceedings.

In Arizona clear and adequate remedies in cases of alleged illegal or erroneous tax assessments are provided by statute and, therefore, certiorari will not lie.

Act 92 of the session laws of the Legislative Assembly of Arizona of 1903, amending chapter VII of the Revised Statutes of 1901 provides (Pars. 3917 and 3918 as amended. See appendix.) for judicial proceedings to enforce the lien of tax assessments against real estate by sale and in such proceedings any defence may be availed of except the claim of over-valuation, which is provided for in paragraph 3875 of the Revised Statutes of Arizona of 1901, giving the right of appeal to the district court whenever any tax payer is dissatisfied with the valuation placed upon his property (see paragraph 3875 printed in full in the appendix hereto).

As the right of certiorari in tax matters is largely discretionary and will not be granted where the petitioner does not show substantial injury accruing to him by the action complained of, or has other adequate remedy, nor where, as here, great public inconvenience would result, we submit that the denial of the writ by the supreme court of Arizona should not be reviewed by this honorable court.

Passing these preliminary matters and taking up the question of the validity of the action of the appellees complained of, the controversy resolves itself into the proper construction of paragraphs 3877, 3879 and 3880 of the Revised Statutes of Arizona of 1901, which reenacted paragraphs 2655, 2657 and 2658 of the Revised Statutes of Arizona of 1887, prescribing the duties and power of the territorial board of equalization. So much of these paragraphs as is material, reads as follows:

3877. (Sec. 47.) Immediately after the adjournment of the board of equalization in June (July), the clerk thereof shall make an abstract of the assessment roll, containing the whole number of acres of land, other than town or city lots, listed in the county, and the valuation thereof, and the value of the improvements thereon; the total valuation of town or city lots and the value of the improvements thereon; the whole number of miles of railroad within the county, and the value thereof; the whole number of horses, and their total value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the gross amount of all other property, and the total valuation of all taxable property; which abstract the clerk shall make out in duplicate, filing one copy in the office of the board of supervisors, and transmitting one copy forthwith to the territorial auditor; but the territorial board of equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned, as it may deem advisable; and if the said board of supervisors or clerk shall fail to forward to the territorial auditor the said abstract, the territorial board of equalization must obtain the abstract or so much thereof as is necessary from other and reliable sources.

3879. (Sec. 49.) (As amended by Act 23, Laws 1903.) The Territorial Board of Equalization shall consist of the Territorial Auditor, who shall be Chairman of the Board, and one member from each of the Judicial Districts of the Territory, * * * * * * * * * *
They shall sit at the office of the Territorial Auditor on the second Monday in August of each year, for the purpose of, and they are hereby authorized and required to examine the various assessments, so far as regards the Territorial tax, and equalize the rate of assessment in the various counties whenever they are satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the different Assessors and Boards of Equalization. The said Board shall continue in session until the business before it shall be disposed of, and shall have access to and make use of all records in the office of the Territorial Auditor and Territorial Treasurer, which will aid them in the disposition of such business. The said Board shall keep a record of the business transacted by it, and are authorized to employ a secretary,

* * * * * * * * * *

3880. (Sec. 50) The said board shall ascertain whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties in the territory, and on such examination they may increase or diminish the valuation of property in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of property in the territory; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the boards of supervisors of the several counties. And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county.

[The foregoing paragraphs and other paragraphs under the same title "Revenue" in the Revised Statutes of 1901, to which reference will be made in the course of the argument, are printed in full as an appendix hereto.]

The petitioner (appellant here) contended in the court below, as it does here, first, that under these paragraphs of the Statutes of Arizona the Territorial Board of Equalization is without power to increase the sum of all the valuations of property in the several counties of the Territory as fixed and determined by the respective assessors and county boards; second, that the Territorial Board of Equalization has no authority to raise or diminish the valuations placed upon different classes of property in any county; and third, that if the Territorial Board of Equalization may equalize valuations by classes of property, it is nevertheless confined to the classification made by paragraph 3877, and cannot for that purpose recognize a sub-class such as patented mines.

The first contention of the appellant is based wholly upon the theory that the paragraphs of the Arizona Statutes in question were adopted from the Statutes of Colorado and carried with them an alleged judicial construction by the Supreme Court of Colorado in the case of People ex-rel Crawford v. Lathrop (3 Colo., 428).

On the other hand, the respondents contended that the Arizona Statute is clear and unambiguous with respect to the powers of the Territorial Board of Equalization, that the construction contended for by the respondents had been fixed by the uniform action of the Territorial Board of Equalization for eighteen consecutive years, that such practical construction was recognized and adopted in the revision of 1901, that the paragraphs of the Arizona Statutes in question were not adopted from the Colorado Statutes, and that the Colorado case cited did not construe the Colorado Statute in such wise as to attach to the language thereof a construction which would be carried by that language if adopted in another jurisdiction, but that

the decision of the Colorado Court was controlled by constitutional provisions which imposed upon the Colorado Statute the limited construction contended for by the appellant here.

The court below, after a most careful consideration, overruled all of the contentions of the petitioner and in a full and convincing opinion sustained the action of the respondents (Opinion Record 61-71).

The next question presented is the weight to be given the decision of the court below construing the Territorial Statute in question, and we submit that

The Supreme Court of the United States will not disturb a decision of the Supreme Court of a Territory construing a local statute unless manifest error appear.

In Sweeney v. Lomme (22 Wallace, 208), the court, per Mr. Justice Miller, said:

"The first error assigned and mainly relied on is, that the bond on which the suit is brought, having been given to Roberts, the Sheriff, this action cannot be maintained by Lomme, the party for whose benefit it was really given.

"This question has been decided differently by different state courts under precisely the same Code of practice.

"In several of these it has been held that the real party in interest is always the proper plaintiff, while in others it is held that the suit must be brought by the obligor in the bond for the use of the party in interest.

"Without expressing any opinion of our own on the question, *we hold that as it is one which arises under their own Code of practice, we should, in this conflict of authority, adopt the ruling of the supreme court of Montana in the consideration of it.* This assignment of error, is, therefore not well taken."

In Northern Pacific R. Co. v. Hambly (154 U. S., 349), the court, per Mr. Justice Brown, said:

"We have thus far treated this case as determinable by the general and not by the local law, as was held to be proper both in the Ross case and the case of Baugh. In so holding, however, the court had in view only the law of the respective states as expounded by their highest courts. Wherever the subject is regulated by statute, of course the statute is applied by the Federal courts pursuant to Revised Statutes, section 241, as a 'law' of the state.

"By section 3753, Compiled Laws of Dakota Territory, in one of the courts of which this case was originally commenced, 'an employer is not bound to idemnify his employe for losses suffered by the latter in consequence of the ordinary risk of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employe.' In the case of *Elliot v. Chicago, M. & St. P. R. Co.* 3 L. R. A. 363, 5 Dak. 533, a case which arose after the enactment of the above statute, the supreme court of the territory held that a section foreman and a train conductor were co-employes within the purview of this statute, and were 'engaged in the same general business.' *While this construction, given by the supreme court of a territory, is not obligatory upon this court, it is certainly entitled to respectful consideration, and in a doubtful case might well be accepted as turning the scale in favor of the doctrine there announced.* The opinion is a very elaborate one, reviews a large number of cases, and follows those of New York, Pennsylvania, and Massachusetts, as founded upon sounder principles. We may safely assume that the construction thus given to this statute will not be overruled by the courts of the two states which have succeeded the supreme court of the territory without most cogent reasons for their action."

In Fox v. Haarstick (156 U. S., 674), the court, per Mr. Justice Shiras, said:

"This was the conclusion reached by the supreme court of the territory, which disposed of the question in the following terms: 'It is contended that the court erred in failing to find facts on the question of fraud set up in the answer. The court found separatively and specifically that the contract set up in the complaint was sustained by the evidence. This finding necessarily negatives any fraud as alleged, and is sufficient to sustain the judgment.'

"It is true that this ruling of the supreme court of the territory does not, even in a question of practice arising under the local law, preclude this court from reviewing it, as would a decision of a state supreme court in similar circumstances; *but unless a manifest error be disclosed, we should not feel disposed to disturb a decision of the supreme court of a territory construing a local statute.* So far from discovering manifest error in that ruling we concur with the supreme court of the territory in their disposition of the question."

In Salina Stock Co. v. Salina Creek Irrigation Co. (163 U. S., 109), a question of practice under the Utah code of civil procedure was presented, and it was argued that as the code of civil procedure of California is in similar terms to that of Utah, the Utah practice should be regulated by the decisions of the California courts in construing the provisions of the California code. This court, however, per Mr. Justice Shiras, said:

"But the sole contention is that it was not competent for the supreme court to modify the findings of fact of the court below and enter a judgment on the facts as thus modified—that, if dissatisfied with the findings, the supreme court should have sent the cause back for a new trial. Several California cases are cited, in which it was held that when the findings are erroneous it is not the

province of the supreme court, on appeal, to look into the evidence with a view to reform the findings, and then to enter a judgment in accordance with what the findings ought to have been, but that, in such a case, the supreme court will reverse the judgment and remand the cause for a new trial.

"While it is true that the code of civil procedure of California is in similar terms to that of Utah, *it does not follow that the courts of the latter will be regulated by decisions of California courts in construing the provisions of the code.*"

* * * * * *

"Without denying the authority of this court to find error in the judgment of the supreme court of a territory, even in passing on a question of practice, we certainly should not feel inclined to exercise such authority unless we were able to perceive that injustice had been done."

In Whitney v. Fox (166 U. S., 637), the construction of a statute of Utah was involved. It was contended that the Utah statute was copied substantially from a statute of California and that the interpretation placed by the Supreme Court of California upon that statute should be followed in applying the Utah statute. After suggesting that the Supreme Court of Utah evidently entertained a different view of the Utah statute, this court, per Mr. Justice Harlan, said:

"While, as said by this court in *Coulan* v. *Doull*, 133 U. S., 216, 233, it is the ordinary rule to accept the interpretation given to a statute by the courts of the country by which it was originally adopted, the rule is not an absolute one, to be followed under all circumstances. We concur in the interpretation placed upon the Utah statute by the supreme court of Utah, as one required by the obvious meaning of its provisions, *and we do not feel obliged, by the above rule, to reject that interpretation because apparently the highest court of the state from which*

the statute was taken has, in a single decision, taken a different view. We, therefore, hold that to the extent indicated by the court below Whitney was an incompetent witness as to any fact occurring before the death of Lawrence and equally within the knowledge of both."

We confidently submit that, here, the construction given by the Territorial supreme court to the local statute in question is certainly not manifestly wrong, but, on the contrary, is the plain intent of the legislative assembly, and that even were the question doubtful this honorable court should be controlled by the authorities we have cited, and accept the ruling of the court below.

With these preliminary suggestions we come to a consideration of the merits of the case, and deem it expedient to incorporate herein the full presentation made in the brief filed in the court below by Mr. E. S. Clark, as attorney general of the territory.

The questions involved in the consideration of this case are somewhat new. The establishment of state or territorial boards of equalization charged with powers and duties of the character of those with which our territorial board is charged is the result of comparatively recent legislation. A casual view of the cases, not numerous and wholly irreconcilable, suggests that the questions are yet ones practically of first impression.

The theory and intent of the Arizona System of taxation

In the interpretation of statutes, or of any written laws, the mischief sought to be remedied, or the end sought to be attained, should be kept in view as a guide.

It is a matter of common observation that a tendency has grown up in local communities to so value property

for the purposes of taxation that each community, acting selfishly and, if it may do so, independently, will so value its property that it will bear the least possible share of the burden that should be borne by all throughout the state of which the community, whether county, township, city or district, forms a part. This evil has grown to such an extent that legislators have for the past quarter of a century been endeavoring to find a remedy for it. As a result of that effort our statute was enacted.

There are certain cardinal principles that are held applicable to taxation, and they are probably as clearly stated by Adam Smith as by any authority upon that subject. The axioms he laid down have been quoted, cited, and, almost without modification, accepted by the courts and law writers.

They are:

I. "The subjects of every state ought to contribute towards the support of the Government, as nearly as possible in proportion to their respective abilities; that is, in respect to the revenue which they respectively enjoy under the protection of the state." [The author then likens the expense of government as borne by the individuals of a nation to the expense of the management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their respective interests in the estate, and adds] "In the observation or neglect of this maxim consists what is called the equality or inequality of taxation."

Maxims II, III, and IV laid down by him relate only casually to our discussions:

II. The tax which each individual is bound to pay ought to be certain, and not arbitrary.

III. The convenience of the taxpayer as to time and manner of levy should be considered; and

IV. The tax ought to be so contrived as to take out and keep out of the pockets of the *people* as little as possible beyond what goes into the treasury: that is, the cost of collecting the taxes should be kept as low as possible.

Any law that violates these principles must be subversive of justice.

There is an idea prevalent that taxes are a burden imposed *in invitum*, and the resistance to which is justifiable, and courts have been, in many instances, too prone to take a like view. In good morals, upon every principle of just government, the cost of the maintenance of the government should be voluntarily borne—as a just contribution by the citizen willingly paid, and not as an exaction forced from him against his will. The citizen who objects to this contribution is not and cannot be a good citizen.

The facts in this case so clearly show that certain classes of property heretofore have not borne their fair share of taxes that a failure to compel them to do so is to directly work an injustice upon those who voluntarily make their contribution to the support of government, just in the proportion that the failure of those who do not, bears to those who do pay their just taxes,

Briefly stated, our system of taxation, which seeks to apportion the burden proportionately and uniformly, is:

1. The assessor elected by the people of each county calls upon the property owners of his county for a list of their taxable property.

2. The assessor returns this list to the Board of Supervisors with his estimate of the values of the various kinds of property listed.

3. The Board of Supervisors then examines this list,

and if that board thinks the estimated values returned by the assessor a fair one, it so stands; but if the board thinks it too high or too low, it changes it accordingly.

4. These returns are made finally to the Territorial Board of Equalization, whose functions and powers are the subject of dispute in this case. The returns are required to be by classification of property prescribed by statute and such further classification as the Territorial Board of Equalization may require.

The uniform practical construction of Secs. 3877, 3879 and 3880 with respect to the functions and power of the Territorial Board of Equalization.

It appears, and we say it so appears because they are facts of which the court below took judicial notice and of which this court will take judicial notice, of which proof is not necessary and of which successful contradiction is not possible, that for nearly twenty years our tax law has been construed by those officers charged with its execution, precisely as it has been by the Board at its last session when it ordered the raising of the valuation of certain classes of property; and this, with, in some cases, the direct, express approval of eminent lawyers whose duty it was to advise as to the construction of the law, and in other instances with the tacit acquiescence of other equally good lawyers with complete knowledge of the practice and whose duty it was to correctly advise.

Our tax law so far as it relates to the creation of the Territorial Board of Equalization, and defines its duties and powers, was enacted in 1887. The first meeting of the Board for the purpose of equalization was in August, 1887. At that time the Hon. John J. Hawkings was

Territorial Auditor, and *ex virtute officii*, the chairman and a member of the Board. Judge Hawkins was at one time and not long after that meeting an honored member of the Supreme Court of Arizona, and has the reputation of fine legal ability. At that meeting the Board raised the valuation of cattle in Cochise county twenty per cent.; in Gila county eighty-five per cent.; in Pima four per cent.; in Pinal forty-five per cent.; and in Yuma twenty-three per cent.; and of horses in Cochise county fifty per cent.; in Gila seventeen per cent.; in Pima fifty per cent.; in Apache forty per cent.; in Graham fifty per cent.; and in Maricopa fifty per cent. Slight reductions were made in the valuation of some classes of property, but the total valuation of all the property in the Territory was raised by large amounts by the increase in valuation of the classes mentioned. John A. Rush was at that time Attorney General of the Territory, (R. p. 55).

Again in 1888, Judge Hawkins then, as before, being Territorial Auditor and chairman of that Board, the Board raised the returned valuation upon lands, improved lands, town and city lots, improvements on town and city lots, and upon certain classes of cattle, varying percentages throughout the various counties of the Territory, thereby increasing by raising the valuation of certain classes, the aggregate value of all the property in the Territory. John A. Rush was at that time Attorney General of the Territory, (R. p. 55).

In 1889, Thos. Hughes was Auditor and Clark Churchill was Attorney General. At the meeting of that year the Board asked of the Attorney General specifically as to its powers and the Attorney General thereupon gave his opinion in writing which was as follows:

PHOENIX, A. T., AUG. 20th, '89.

"*To the Hon. Territorial Board of Equalization,*
Tucson, Ariz.

"Complying with your request that my opinion be given you upon the following propositions, namely:

"First: You state that the Board of Equalization of Yavapai County have reduced the assessed value of the subsidy lands of the Atlantic and Pacific Railroad Company from $1.25 per acre to 30c per acre and you desire my views whether you have the power to change that valuation, and

"Second * * * * * * * *

and I have the honor to answer both questions together, as follows, namely: By Par. 2657 R. S. of Arizona, your Board is authorized and required to examine the various assessment, etc., etc., and Par. 2658 provides that 'The Board shall ascertain whether the valuation, etc., etc.' I understand that the intention of all these provisions taken together is:

"1st. That if you find the same classes of property of equal value in different counties assessed at different valuations — in some higher and in some lower — that it becomes your duty to raise the lower, or reduce the higher valuation, so as to make the assessment uniform in all the counties.

"2nd. That in doing this you are prohibited from so changing the assessed value of part of the property in the Territory as to leave the aggregate assessed value of all the property in all the several counties below the aggregate valuation as returned by the boards of supervisors of the several counties.

"3rd. There is no limitation upon your proceeding to 'increase or diminish the valuation of property in any county as much as in your (their) judgment may be necessary to produce a just relation between all the valuations of property in the Territory,' except that last above stated.

"4. There is nothing in the Statute prohibiting you from so reducing or raising any part of the assessed valuation of part of the property in any one county as to make the aggregate valuation of the property of that county either higher or lower than the aggregate valuation returned by the Board of Supervisors provided you keep within the other rules as above indicated."

"Respectfully your Obedient Servant,
(Signed) "CLARK CHURCHILL,
"Attorney General."

At that meeting the Board raised valuations of horses, mules, asses, cattle, sheep, swine, and three classes of lands in various counties by percentages ranging from 2 to 150 per cent., raising the aggregate value of all the property in the Territory. (R. p. 56).

In 1890 Hughes was Auditor and Churchill Attorney General. Again the valuations of several classes of property, as horses, cattle, sheep, goats, etc., were raised by percentages varying from 3 to 33 per cent, and the aggregate value of all the property was thereby raised. (R. p. 56).

In 1891 Hughes was Auditor and Churchill Attorney General. The valuation of classes was in some instances raised and in some reduced, at various rates, the result being to increase the aggregate value of all the property in the Territory. (R. p. 56).

In 1892 Hughes was Auditor and William Herring was Attorney General, and again there were raises and diminution of valuations of *classes* of property, the result being an increase of the aggregate valuation of all the property in the Territory. (R. p. 57).

In 1893 H. C. Boone was Auditor and Francis J. Heney was Attorney General, and the valuation of classes was

raised in some instances and in others diminished, the result being as increase in the aggregate value of all the property of the Territory (R. p. 57).

In 1894 Boone was Auditor and Satterwhite Attorney General, and the valuations of certain classes were raised and others diminished, the result being an increase in the valuation of all the property in the Territory (R. p. 57).

In 1895 C. P. Leitch was Auditor and Col. J. F. Wilson, lately our delegate to Congress, was Attorney General, and the Board increased the valuations of cattle, mules, land, town and city lots, and the improvements in certain counties by various ratios of percentage, increasing the aggregate valuation of all the property in the Territory (R. p. 57).

In 1896 Leitch was Auditor and Wilson Attorney General, and horses, mules and lands were raised by various ratios of percentage in certain of the counties, increasing the aggregate value of all the property in the Territory (R. p. 58).

In 1897 Leitch was Auditor and C. M. Frazier was Attorney General, The Board raised in most instances the valuations of horses, sheep, swine, goats and land, and in one or two instances lowered some of these classes by varying ratios in certain counties, the result of which was an increase in the aggregate valuation of all the property in the Territory (R. p. 58).

In 1898 Dr. G. W. Vickers was Auditor and C. F. Ainsworth was Attorney General, and with slight reductions in some instances the Board increased the valuations of cattle, sheep, horses, goats and swine, resulting in an increase in the aggregate valuation of all the property in the Territory (R. p. 58).

In 1899 Dr. Vickers was Auditor and Mr. Ainsworth

Attorney General. Again there was an increase in most instances of the valuation of classes of property and a diminution in some, the aggregate value of all the property in the Territory being increased (R. p. 59).

In 1900 Dr. Vickers was Auditor and Mr. Ainsworth Attorney General. The Board accepted the returns of valuation of mining properties as made, but increased the valuation as returned of cattle, sheep, mules, swine, goats and horses by ratios varying from 2 to 100 per cent, increasing the aggregate value of all the property in the Territory (R. p. 59).

In 1901 Dr. Vickers was Auditor and Mr. Ainsworth was Attorney General. There were raises by different ratios of percentage ranging from 1 to 80 per cent on range cattle, milch cows, land grants, goats, mules, swine and horses, raising the aggregate valuation of all the property in the Territory (R. p. 59).

In 1902 W. F. Nichols was Auditor and Judge E. W. Wells, once a member of the Supreme Court of Arizona, was Attorney General. The Board that year raised by varying ratios the returned valuations of cattle, sheep, milch cows, land grants, goats, swine, and range, work, and saddle horses, resulting in a raise of the aggregate valuation of all the property of the Territory (R. p. 60).

In 1903 Mr. Nichols was Auditor and Judge Wells was Attorney General. Mules, asses, goats and milch cows were raised by various ratios of percentage from 1 to 26 per cent., thereby raising the aggregate valuation of all the property of the Territory, (R. p. 60).

In 1904 Mr. I. M. Christy was Auditor and Judge Wells was Attorney General. Raises were made by the Board that year of range cattle, milch cows, mules and horses by

ratios of percentage ranging from less than 1 to 97 per cent. The aggregate valuation of all the property of the Territory was raised, (R. p. 60).

In 1005 Wesley A. Hill was Auditor and E. S. Clark was Attorney General. The Board made raises of the valuation of classes, for the *first time* including patented mines, although they had been returned in a separate class since 1897.

Following the action of the Territorial Board of Equalization from 1887 until 1904, the local taxing officers of the various counties had increased the valuations in their counties as directed by the Territorial Board of Equalization, and the taxes computed upon this basis had been paid without protest by the taxpayers of the Territory.

The Functions of the Assessor, County Boards and Territorial Board of Equalization.

It is argued by some courts that the power of fixing the value of property is vested in the assessor, subject to modification by the County Board of Equalization. It is argued that the valuation fixed by the assessor, he being an officer elected by the people, one who has a local view of the property, and opportunity to know its value, must be presumed to be the proper value of the property listed. This may be true, but it is carried too far to say that it is at all conclusive. To carry the presumption so far is to instantly take away any reason for the establishment of any board of review. It is because, as a matter of fact, that the assessor so often, corruptly, negligently, or ignorantly, fails to discharge his duty of just valuation that a board of

review is established by the Legislature to correct that evil. The valuation by the assessor is not conclusive; it is not even presumed to be correct, for upon a contrary presumption the Board of Supervisors may either diminish or increase the valuations returned by him. There may be a presumption that the local officer, with his better opportunities, is better able to estimate values than is the Board of Supervisors, but the presumption is of no more force than is the presumption in favor of the judgment of a Justice of the Peace, upon an appeal from it to the District Court, binding upon the latter. The power to review it is given in both instances upon the theory that the lower tribunal may have and could have erred. The power is intended to be corrective, in both cases, of possible errors, the occurrence of which are so flagrant and so frequent as to warrant the establishment of the corrective tribunal.

The power of the Board of Supervisors is simply that of equalization. If there is to be observed a distinction between equalization and assessment it has never been carried, under a statute anything like ours, to the extent of holding that the local board may not change valuations returned by the assessor. The power of the local board to diminish or increase individual valuations has not been questioned. And we think it will hardly be claimed that they may not change valuations, regardless of whether the aggregate valuation, as returned by the assessor, is reduced or increased. There can be but one justification for any change in valuation for taxation, and that is that the change brings the valuation more nearly the *cash value* of the property assessed. Any other change would be clearly in derogation of every principle of just taxation.

It would be almost inconceivable that changes made by

the local board may not affect, either by increasing or diminishing, the aggregate of the valuation returned by the assessor. It could only be by the remotest chance that the aggregate would not be changed by any fair process of equalization by the local board. True cash value is the standard by which equalization is to be made—not by averages. And yet it is by averages that some of the courts suggest that equalization is to be obtained. Singularly enough, one of these courts argues that to permit a raise in the value of the aggregate of the property in a county is in effect to say that every property owner in the county has perjured himself and that the assessor has violated his oath of office in each instance. The court deprecates any such presumption, and overlooks the fact that, where certain *classes* of property have been under valued, this distasteful presumption attaches to only a part, and perhaps only a small part, of the people, and that to equalize by averages is to change every assessment and impute perjury to every taxpayer.

All sorts of evils have been supposed by many of the courts to follow from a plain interpretation of our statute, or similar ones, and they have been led thereby into, to say the least, ridiculous conclusions.

We contend that our statute is clear and unambiguous as to the powers of the Territorial Board, and that that interpretation is not to be avoided by any imaginary abuses of powers that might flow from them.

These powers were given to correct palpable, flagrant evils such as those admitted in this case. To say that they may be abused is no more argument to deny the power than to say that a court may abuse its powers and hence it should be abolished, or its acknowledged powers

revoked. There is a remedy if the Territorial Board abuses its powers—it is enough to say that it is not pretended that it has in this case.

Cooley on Taxation (3rd Ed.) 56
Id. 475

For eighteen consecutive years, from the time of the enactment of our law until now, the Territorial Board of Equalization has assumed and exercised the right and power:

1. To raise or lower the valuation of specific classes of property as returned to it by the several counties, and

2. In each and every one of these years to so raise such valuations that the aggregate value of all the property in the Territory was raised.

It appears by the tabulated scales of valuations returned by the county officers in 1905 (R. p. 16) that in Yavapai county cultivated lands were valued by the county officers at 50 per cent of their value; that the improvements on those lands were valued at 50 per cent; unimproved lands at 75 per cent; land grants at 40; town and city lots at 60; improvements on town and city lots at 60; range horses at 70; work horses at 70; saddle horses at 70; asses at 70; range cattle at 75; beef cattle at 50; milch cows at 50; sheep at 60; goats at 60; swine at 50; railroads at 50; merchandise at 33⅓; all other kinds of property except mines at 30; and patented mines at *three per cent of their value.* In other words patented mines were valued for the purposes of taxation by the county officers at a percentage of their actual value, about one-seventeenth of the percentage of valuation of cultivated lands, improvements on lands, beef cattle, milch cows and railroads; one-twenty-fifth of the percentage of

valuation of uncultivated lands, railroad lands and range cattle; one-thirteenth of the percentage of valuation of land grants; one-twentieth of the percentage of valuation of town and city lots, improvements on town and city lots, sheep and goats; one-twenty-third the percentage of valuation of range, work and saddle horses and asses; one-eleventh of the percentage of valuation of merchandise and other property not classified; and one-third of the percentage of valuation of the improvements upon patented mines.

The average valuation of cultivated lands in all the counties is (omitting fractions) 64 per cent of its cash value, about 21 times the percentage of valuation of patented mines, as returned, in Yavapai county. The average ratio of valuation of town and city lots in all the counties as returned to the Territorial Board is (omitting fractions) 76 per cent of their cash value, or more than 25 times as much as the ratio of valuation of patented mines in Yavapai county. The average ratio of valuation of range cattle in all the counties is 75 per cent or nearly 25 times as great as that of patented mines of Yavapai county. The average ratio of valuation of sheep in all the counties is (omitting fractions) 60 per cent, or 20 times as great as that of patented mines in Yavapai county. And we might continue the comparison throughout the various counties. These inequalities are not disputed, and are not to be successfully contradicted. No comment, it would seem, is necessary. The inequality is so great that its injustice is at once suggested. But just such inequalities may be expected, differing possibly only in extent, where each county fixes, without review, the valuation of property within its limits. A glance at the scale shows inequalities in the same class of property in the various

counties. They should disappear. Justice requires that they should be equal, otherwise the burden of Territorial taxation will be unequally borne. Whatever the causes of these inequalities may be there should be some method of their correction. It is true that if the statute were followed and property was assessed at its full cash value, complete equalization would result and neither a local nor a territorial board would be needed.

But we know that property is not so assessed, that it is not as a rule assessed at its full cash value, and the Legislature had that in view when it attempted to make provision for the correction of inequalities from an almost universal departure from the rule of assessing at full cash value. It is important that each individual should be relieved of burdens put upon him by these inequalities. It is just as important to him that the valuation of property of another class shall be as fairly made as that of property in the class of which he may be the owner. If he be a cattle owner it is unfair to him, and violates the law, if his cattle be valued at 70 per cent of their cash value and that patented mines, or horses, should be valued for only 10 per cent of their value. It would be a gross injustice that one or more classes of property should be assessed at a large proportionate valuation and another class should be assessed at a greatly less one. It has been known that inequalities have existed in valuations of classes of property, and it has been recognized as an evil for which the Legislature, not only of this, but of other States and Territories, have sought to supply a remedy.

Some States have attempted to remedy the evil of low assessments by providing for a Board of Equalization which shall deal with the aggregate of the values of

property in the several counties. But this is so palpably inequitable, so certainly makes inevitable the perpetuation of the evil, that those systems are not to be approved. It certainly is not fair, if it be shown that in a given county every class but one of property is valued at a high rate, and that one class is assessed at a low one, that a raise upon the aggregate should be made for the purposes of equalization. This does not equalize—it is precisely the reverse of it, and emphasizes the original wrong. What principle of justice would suggest that, if every class but one of property in Yavapai county was assessed at 75 per cent. of its value and that remaining one was assessed at only 1-25th of its value, then all the property in that county should be raised a given ratio to effect an equalization? Such a procedure not only leaves the inequality, but inflicts a penalty upon those property owners whose property was assessed at a high rate—not for any wrong of theirs but for a wrong committed in the gross undervaluation of property other than their own. Such a law, if there were one, condemns itself as violating the fundamental principles of just taxation.

Again, it is well known that, not only in Arizona but in nearly every State in the Union, there are certain classes of property that seem favored by local taxing officers. No matter what the motive may be, it is a fact so well known that it is a public scandal. No one has the temerity to contend that the patented mines of Yavapai county, or of any other county, should be assessed at a rate of only 1-20th of that of city and town lots in that county.

Our legislature attempted to devise a precedure to secure uniformity of taxation, such that when, in its administration, if for any cause this uniformity is destroyed, it may

be restored by a board of review, removed from those local conditions which made these inequalities possible.

The evil is palpable; it was fully known to the legislature.

The Statute under consideration is to be liberally construed

In England and in many of our states the courts have said that tax laws should be strictly construed. Without entering into the refinements indulged in by the courts to note the difference between "strict" and "liberal" construction of statutes we may, we think, accurately enough, say that a strict construction is one which (notwithstanding a complete knowlege of the evil sought to be remedied by the enactment) if a construction can be fairly given a statute that results to defeat its purpose, it must be done. "Liberal construction" we understand to be, that where the evil sought to be remedied is known, the statute enacted to effect the relief shall, if it can be, construed to accomplish this.

The English cases, and those American cases following them, proceed upon the theory that a tax is an exaction from unwilling subjects and hence all tax laws must be "strictly construed" That might be, in a monarchical form of government, but it is not American. Here, rather, a tax might be held a willing contribution by every citizen to the support, of that government of which he is an active part, of which he not only shares the duties but the privileges; and all tax laws in America should have, as we deem they do have, for their purpose, not an exaction of dues, but a provision that contributions to the support of the government shall be uniform and equal. We can not conceive an American citizen a good citizen who seeks to

exempt himself from this contribution. We can not conceive that law a just law that makes possible an escape from this contribution. And of two possible interpretations of a statute designed to effect uniformity and equality of this contribution, the very genius of American institutions, as well as every principle of justice, demands that that one shall be adopted that effects that purpose.

In marked contrast with the English courts and certain of our own state courts, the Supreme Court of the United States and various of the Circuit and District courts consider tax laws to be remedial and to be liberally construed to effect their purpose of just distribution of the burdens of taxation.

There are many cases in the Federal Courts in which it has been declared that the revenue laws are not to be regarded as penal in the sense that requires them to be strictly construed, though they impose penalties and forfeitures. They have even been declared remedial in character.

Sutherland Stat. Construction, Par. 535.
Wood vs. U. S., 16 Pet. 342.
Taylor vs. U. S., 3 How. 197.
Cliquot's Champagne 3 Wall. 114.
In re Twenty-eight cases 2 Ben. 63, Fed. case 14281.
U. S. vs. Willets 5 Ben. 220.
U. S. vs. Hodson 10 Wall 395, and many others.

To the same effect are the following decisions from various states:

Revenue Statutes are not to be regarded as penal, and therefore to be construed strictly. They are remedial in their character, and to be construed liberally, to carry out the purposes of their enactment:

State ex rel. vs. Raine, 47 Ohio St. 455.

Haskel vs. City of Burlington, 30 Iowa 232.

Hudler vs. Golden, 36 N. Y. 446.

Cornwall vs. Todd, 38 Conn. 443.

Statutes relating to taxation are not penal, nor are they in derogation of natural rights.

Sutherland Stat. Construction 535.

Cornwall vs. Todd, 38 Conn. 443.

And the Supreme Court of New Jersey says :

"In laying the burden of taxation upon the citizens of the state, while it must be the object of every just system to equalize this charge by a fair apportionment and levy upon the property of all, it is equally the duty of the courts to see that no one, by mere technicalities, which do not affect his substantial rights, shall escape his proportion of the public expense and thus impose it upon others. A *liberal* construction must therefore be given to all tax laws for public purposes."

State vs. Taylor, 35, N. J. L. 184.

Bacon vs. Board of Tax Commissioners, 126 Mich. 22.

Salisbury vs. Lane, 7 Idaho 370.

And the Supreme Court of Arizona has repeatedly adopted that construction of our tax laws which make them effective instead of abortive.

Aztec Land & Cattle Co. vs. Navajo County, 80 P. 318.

Western Investment Etc. Co. vs. Murray, 6 Ariz., at page 224.

County of Cochise et al vs. Copper Queen Consolidated Mining Co. 71 Pac. 957.

And with these rules of construction we may with confidence examine our tax law. Uniformity is to be secured — does our statute effectively provide for it ?

The Statute in question clearly confers power to raise or lower the valuation of particular classes of property in particular counties and in so doing raise the aggregate of the valuations of property in all the counties.

[The paragraphs to which reference will now be made, are printed in full in the appendix].

Paragraph 3836, Stat. 1901, provides that all taxable property *must* be assessed at its full cash value, and declares that the term "cash value," whenever used in this title, shall be taken to mean the "amount at which the property would be taken in payment of a just debt from a solvent debtor."

Paragraph 3842 requires the assessor before entering upon the duties of his office to take an oath that he will assess all property at its "just cash value."

Paragraph 3847 requires the assessor to determine the full cash value of all property and assess the same.

Paragraph 3861 requires him in making the assessment roll to set down therein the cash value of all property assessed by him.

Paragraphs 3865 to 3868 provide for the County Board of Equalization and define its duties and powers. Under Paragraph 3868 it may add to or deduct from the assessed value of any property, if in its judgment the value fixed in the assessment roll is too small or too large, whether such value is fixed by the owner or assessor.

Paragraph 3876 providing for appeal to the District Court declares that "the intent and purpose of the foregoing

section is to have all property and subjects of taxation fairly assessed, at the value which would be realized therefrom by cash sale, but not a forced sale, * * * and for this purpose the power conferred upon the court is to be liberally construed." But the court is expressly prohibited from reducing the valuation of any property below the fair cash value of the property, or what the property would sell for in cash.

Paragraph 3877 provides that the clerk of the Board of Supervisors, so soon as the Board of Equalization has adjourned in July, shall make an abstract of the assessment roll, classified, showing the total valuation of each class of property, and transmit the same to the Territorial Auditor. This paragraph also provides that the Territorial Board of Equalization shall add to or diminish the classification, and to require such other or further matters to be returned as it may deem advisable.

Paragraph 3881, provides that:

"On or before the fourth Monday in August in each year the Territorial Auditor shall transmit to the Board of Supervisors of each county a statement of the changes, if any, which have been made in the assessment by the Territorial Board of Equalization, and the rate of taxes which is to be levied and collected within said county for Territorial purposes."

From the foregoing it plainly appears that the Legislature intended to compel uniformity of taxation, on the basis of cash value, as it expresses that purpose repeatedly and peremptorily. Lest the assessor might fail in his duty, or err in judgment, the County Board of Equalization is created, with not only the power of original assess-

ment, but with the power to review and correct the anticipated errors or shortcomings of the assessor. But lest these boards might also fail, lest the machinery already provided for the attainment of that uniformity of valuation at a cash value might prove inadequate as to some whole class or kind of property required to be returned, the Legislature provided for the Territorial Board of Equalization, and clothed it with power to correct and review the proceedings of the county boards. In view of the gross and culpable failure of the local assessor to properly value patented mines, as is so clearly shown by the admitted facts in this case, the wisdom of the Legislature in thus perfecting the agencies through which its will should be accomplished and its defeat prevented becomes conspicuous.

Paragraph 3879 provides that the Territorial Board of Equalization "shall sit at the office of the Territorial Auditor on the second Monday of August in each year for the purpose of, and they are hereby authorized and required to examine the various assessments, so far as regards the Territorial tax, and equalize the rate of assessment in the various counties whenever satisfied that the scale of valuation has not been adjusted with reasonable uniformity by the various assessors and Boards of Equalization."

The lawful "scale of valuation" in this Territory is the *cash value.*

Paragraph 3880. "The said board shall ascertain whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties in the territory, and on such examination they may increase or diminish the valuation of property in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of

property in the territory; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the Boards of Supervisors of the several counties. And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county."

Statutes of similar import have been enacted in various states and territories and their interpretation has varied widely in the different jurisdictions. The points of difficulty have been those which are relied upon by respondents in this case, *i. e.* whether the board may raise or lower the valuations of *classes* of property and whether in raising or lowering, either by classes or by aggregate values of counties, the board may raise the sum of all the valuations as returned by the various assessors and Boards of Equalization. Let us first consider what it means to "equalize."

It will first be noted that the Board is required to *equalize the rate* of assessment. That is, to see that the standard or proportion of valuation is, as nearly as possible, made equal throughout the Territory on all kinds and classes of property. This standard or rate is defined by law to be the *cash value.* "Our revenue laws," as the Supreme Court of Arizona says in the Copper Queen case (71 Pac. 947) "in conferring upon boards of equalization power to equalize assessments and to add to and increase the same confer a wide discretion upon such boards. This discretion must, however, be a sound one, exercised in good faith, with a view of carrying out the purpose of the law in enforcing equality of taxation and the assessment of property *at its cash value.*"

If, then, in the judgment of the Board, the cash value of any part of the assessable property of the territory has

been attained or fairly approximated in the assessment, no matter in what county or what class of property it may be, and all other property is assessed at a lower rate, it is the duty of the Board to equalize such lower valuations with the former. Such valuation is a standard, or *rate* to which all others must be adjusted. Is it within the power of the Board, under such circumstances to equalize by so lowering that property which is assessed at its cash value, and by so raising that which is not, that an equation of the difference is reached? Certainly not, for then the rule fixing the cash value as the standard would be violated. The Board can only equalize under such circumstances by raising the lower valuations to the *rate* of the higher.

Of course it might some time happen that a return would show an over-valuation. In such a case, of course, the Board would lower it but, even then, it would undoubtedly find so much more property undervalued that the equalization would still raise the aggregate. But the legislature has evidently forseen the extreme improbability of any general overvaluation, as well as the practical certainty that the reverse will be the rule, by commanding that *in no case shall the aggregate be reduced.* This certainly indicates a conviction on the part of the legislature that no considerable part of the taxable property would ever be assessed at more than its cash value. It seems clear that the legislature indulged the legal presumption that some of the local assessing officials would do their duty by returning at least some property or class of property at its cash value, and thus afford the Territorial Board a lawful rate or standard with which all other valuations might be brought into just relation. We have no doubt, however, that should it appear that all property had been returned at less

than its cash value, the Board would have the right, and it would be its duty to raise the valuation of all property in the Territory to that standard. The Board is given the power expressly to raise or lower valuations. There is a limitation on its power to lower—that it shall in no instance reduce the aggregate. There is no such limitation on its power to *raise*—the only one, express or implied, being that it shall not raise beyond the cash value. It is not pretended that this limitation so far as any class of property is concerned has been reached or even approached in the case at the bar. Let us suppose that the statute stopped with the granting of power to increase or diminish the valuation of property in any county as much as in their judgment may be necessary, etc. Could there be any question that the Board might increase or diminish the valuation of property in any county, and that without any regard to its effect upon the aggregate valuation of all the counties? The power to do so, whatever the effect of diminution or increase may have on the aggregate, is express, and could not have been given in stronger terms. It is complete. Now add the clause, "but in no instance shall they reduce the aggregate of all the counties." It is so plain that it is but a limitation upon the full power theretofore given to diminish that it is difficult to argue it. Without the clause it could increase or diminish the aggregate—the qualifying clause takes away the theretofore given power to diminish, and necessarily leaves the power to increase untouched and unaffected. "The Board may go to Prescott." In that there is no implied permission that it may go anywhere else. But put it in this way: "The Board may go anywhere on earth that it pleases but in no instance shall it go to Phoenix." It will be urged that the limiting clause that it may notre duce, somehow

affects the power to increase. By the same reasoning, while it is given power to go anywhere, yet by a limiting clause it is forbidden to go to Phoenix, *ergo*, it can not go anywhere and can only stay where it happens to be.

This brings us to the consideration of another phase of the statute—that the board is required to "examine the various assessments so far as regards the Territorial tax." For what purpose does the board make this examination if, after it has patiently and faithfully performed its duty, the Territorial tax is not changed by a single dollar? Is it conceivable that the Legislature has charged the board with the vain duty of adding here and subtracting there—with taking from one county or class and adding to another—without accomplishing either an increase or diminution, in the Territorial tax? We think not. Nor do we believe this argument is met by urging that by said provision the Legislature may possibly have intended to merely secure from each county its just proportion of the Territorial tax, without changing the total amount of taxes to be collected. In view of the fact that the board must not only equalize to the cash value standard, so that, measured by that standard, a just relation may be produced between all valuations of property in the Territory, but must do so with regard to the Territorial tax, the purpose of the Legislature that the board should exercise a real function with appreciable effect, becomes apparent.

The Power to Increase the Aggregate.

No further argument is needed to show that under the power conferred on the board to equalize, and, with the cash value as a standard, it may, as incidental to that power, raise the sum of all the valuations as returned by

the various assessors and local boards of equalization. The following authorities sustain this proposition :

State ex rel. Thompson v. Nichols, 69 Pac. 775.
State ex rel. Cunningham v. Thomas, 50 Pac. 615
Wallace et al. v. Bullen et al., 52 Pac. 854.
Kittle v. Shervin, 11 Neb. 66.
Renfrew et al. v. Webb et al., 54 Pac. 449.
Burdrick et al. v. Dillon et al., 54 Pac, 785.
Weber et al. v. Dillon, 54 Pac. 894.
Hacker v. Howe, 101 N. W. 256.

In State ex rel. Thompson v. Nichols et al., 69 Pac. 775 (Supreme Court of Washington, July 17th, 1902), the court says :

"It is earnestly contended by the learned counsel for the relator that the action of the state board of equalization herein complained of was not warranted by law, or, in other words, that the state board had no authority or power to raise the aggregate valuation of the property of the state as fixed by the several county boards of equalization, and transmitted to the state auditor by the various county auditors. And if this contention be true, in point of fact, it must be conceded that the act of the board was and is null and void, for it is a firmly established principle of law that boards of equalization, whether county or state, possess only such powers as are conferred upon them either by statute or the constitution. But so long as such bodies keep within the limits fixed by legislative authority, and violate no provision of the constitution, their acts are not subject to review by the courts. * * *

"Nothing but express constitutional limitation upon legislative authority can exclude anything to which the authority extends from the grasp of the taxing power, if the legislature in its discretion shall at any time select it for revenue purposes. And not only is the power

unlimited as to subjects, but in its very nature it acknowledges no limits, and may be carried to any extent which the government may find expedient. It may therefore be employed again and again upon the same subjects, even to the extent of exhaustion and destruction, and may thus become, in its exercise, a power to destroy.

"Cooley, Taxation (2d Ed. pp. 4, 5.)

"Decisions based on statutes essentially different from ours cannot be deemed of controlling force here, except in so far as they announce principles of law of universal application."

The court quotes from the statutes as follows:

"'The said board shall meet annually on the first Tuesday in September, at the office of the auditor of state, and shall examine and compare the returns of the assessment of the property in the several counties of the state, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for each assessment year, according to the ratio the valuation of the property of each county bears to the total valuation of all the property in the state. First. They shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal and uniform so far as possible, in every part of the state, for the purpose of ascertaining the just amount of tax due from each county for state purposes."

And continues:

"It is insisted, on the part of the relator, that the powers of the state board are restricted by law to a mere equalization of the aggregate valuation of the property in the several counties, as fixed by the county boards, and that it has no right or power to increase the total valuation of the property in the state so fixed upon it; and it is argued, in effect, that when the state board raised, as it did in this instance, the valuation of the property in some

of the counties of the state as returned to it by the respective county auditors, and adopted the valuations returned from other counties as the true and just valuations therein, it failed to exercise its proper functions, and assumed, without authority of law, to act in the capacity of assessor; that if the board deemed it proper and just to raise the valuations in certain counties, and accordingly did so, it was incumbent on it to decrease the valuations in the remaining counties in an equal amount, because in no other way could equalization be effected at all. And this position seems to be in accord with the ruling in the cases of People v. Lothrop, 3 Colo. 428; State v. State Board of Equalization, 18 Mont. 473, 46 Pac. 266; Wells, Fargo & Co. v. State Board of Equalization, 56 Cal. 194; and some others cited by counsel for the relator. The first two cases above mentioned are perhaps more favorable to relator's contention than any of the other cases cited by him, but both of those decisions are based upon *constitutional* and statutory provisions materially different from ours, and therefore cannot be considered as authoritative here. The decision in the Montana case, it will be noticed, was rested largely, if not wholly, upon the provision of the constitution of Montana, which had been adopted from the Colorado constitution after it had been interpreted by the supreme court of the latter state. The court proceeded upon the presumption that the framers of the Montana constitution 'were conversant with, and designed to adopt, also,' the interpretation given to the section in Colorado. See State v. Fortune (Mont.) 60 Pac. 1086. In the case last cited, the Montana court adhered to the doctrine announced in State v. State Board of Equalization, supra, but it appears that the chief justice concurred in the opinion for the sole reason that he considered himself bound to do so by the former decision of the court. He said: 'I concur in the foregoing opinion solely on the ground of stare decisis. If the question involved were a new one in this state I would be in favor of disregarding the construction given to the section of the constitution by the supreme

court of Colorado in People v. Lothrop, 3 Colo. 428, and followed in this court in State v. State Board of Equalization, 18 Mont. 473, 46 Pac. 266, as demonstratably wrong.' It was held in that case that the State Board of Equalization was without power to change the valuation of any class of property, its authority being limited to raising and lowering the entire assessment of a county. But such is not the case in this state, for our state board is not only authorized, but required, to 'classify all property, real and personal, and to raise and (or) lower the valuation of any class of property in any county to a value that shall be equal and uniform, so far as possible in every part of the state, for the purpose of ascertaining the just amount due from each county for state purposes.'

"Under the constitution and laws of Utah, which are almost identical with the provisions of our constitution and statutes on the subject in question, the supreme court of that state, in the case of State v. Thomas (Utah) 50 Pac. 615, held that the State Board of Equalization had power, if necessary, for the purpose of equalization, either to raise or lower the aggregate valuation of all the counties in the state. That case is a well considered one, and the decision therein is, in our judgment peculiarly applicable to the base at bar."

In State ex rel. Cunningham et al. v. Thomas et al. State Board of Equalization, 50 Pac. 615. (Supreme Court of Utah. Oct. 2, 1897.) It is said:

"The most important question to be determined is whether the State Board of Equalization has the power to so raise the total valuation of the property of any county in the state as to increase the aggregate valuation of all the counties of the state, as returned, to the state board, by the several county assessors and county boards of equalization. On behalf of the relators it is contended that the powers of the state board are limited, by provisions of the constitution of and statutes, to an adjustment and equalization of the total valuation of the several

counties, as fixed by the assessors and county boards, and that it has no power to increase the aggregate valuation of the property of the state so placed upon it. For the defendant board it is insisted that it has power to raise or lower the total valuation of the property of the state, so as to render the assessment equal and uniform in the several counties, and to make it conform to the true value, in money, of the property assessed.

"The provisions of the constitution, so far as material to the decision of this case, are as follows: In section 2, of article 13, it is provided that 'all property in the state, not exempt under the laws of the United States, or under this constitution, shall be taxed in proportion to its value, to be ascertained as provided by law.'

"If this provision were to be considered by itself, it might be contended with some force that the legislature had power to provide that all property should be assessed at a basis less than its full value, and this might still be considered as "in proportion to its value." The real intent, however, of the framers of the constitution, is made more manifest in section 3, of article 13, which contains this language: 'The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe by general law such regulations as shall secure a just valuation for taxation of all property; so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property.' This provision is closely related to the one in section 2, and directs the legislature not only to provide a uniform and equal rate of assessment and taxation, so that every subject owning property shall pay the same rate of tax as every other subjects, but also declares that all property shall be assessed at a basis which shall be 'according to its value in money.' It is evident that the term 'according to its value in money' means that all property shall be valued, for the purposes of assessment, as near as is reasonably practicable, at its full cash value; in other words, that the valuation for assessment and taxation shall be, as near as

reasonably practicable, equal to the cash price for which the property valued would sell in open market, for this is doubtless the correct test of the value of the property. The manifest intention is that all taxable property should bear its just proportion of the burdens of taxation. These two sections of the constitution harmonize with each other; and by reading and considering them together, it becomes clear that all taxable property within this state must be assessed and taxed on a valuation fixed at its actual cash value, or as near such value as is reasonably practicable.

"In order, it would seem, to guard against unjust valuations which might result from whatever cause, and to secure greater uniformity and equality in taxation, it was provided in section 11 of the same article as follows:

" 'The duty of the state board of equalization shall be to adjust and equalize the valuation of the real and personal property among the several counties of the state. The duty of the county board of equalization shall be to adjust and equalize the valuation of the real and personal properties within their respective counties. Each board shall also perform such other duties as may be prescribed by law.' By this section are created the state and county boards of equalization, and their duties defined. Under its provisions, the controversy in this case mainly arose.

"The provision relating to county boards was before us in the case of Salt Lake City *v.* Armstrong, 49 Pac. 641; and we there held that the county board of equalization might raise or lower the valuation of any class of property in the county, or of real estate in any particular locality, for the purpose of adjustment and equalization of values.

"The action of that board is not restricted to the total valuation made by the assessor. Evidently, its duty is to adjust and equalize the valuation of the property within its county. Its action is therefore confined within the limits of the county; but, within such limits, it has power to raise or lower the individual assessments, so as to make the valuation uniform and equal.

"It has the right to determine the value of property, and, if necessary for the purpose of equalization, may

raise the valuation of one district, and lower that of another, even though by such action the total valuation of the property of the county may be increased or decreased.

"What has been said respecting county boards applies with equal force to the state board, except that it may not encroach upon the domain of the county board in an attempt to adjust and equalize the valuation of property within the county. With this exception, it will be observed that the constitutional duties and powers of the state and county boards contained in this section are precisely the same. When the same duty is imposed, and the same power exists, there the same result may be expected, as intended, from the performance of such duty, and the exercise of such power. How, then, can it be maintained that the state board cannot increase the total valuation of the state when necessary for the purpose of equalization, while the county board may, for such purpose, increase the total valuation of the county, even though it may thereby increase the aggregate valuation of the state? It is true, the action of the state board is confined to counties as component parts of the state, while the action of the county board extends directly to the valuation of the property of the individuals of the county; but the plain duty of each is to adjust and equalize the valuation, so as to make it uniform and equal on all taxable property, according to its value in money. Suppose the property in all the counties of the state, except one, had been assessed, by the assessors and county boards, as its actual cash value, as required by the constitution, and that the property in the one was assessed at only half its cash value; how could the state board, in accordance with its sworn duty, adjust and equalize the valuation, so that all taxable property in the state would be assessed at its value in money, if the board had no power to raise the aggregate valuation? To state the proposition is sufficient to demonstrate the impracticability of the contention of the relators, and the impossibility of a compliance with the requirements of the constitution, the provisions of which are mandatory and binding

equally upon the legislature, the courts, and all officers of the government. The courts have no power to override these provisions, or explain away their effect and operation by judicial construction. Whether the creation of a state board of equalization, with such power, was a wise thing for our constitution makers to do, or whether it constitutes the board a board of assessors, does not concern us. It is sufficient to say that the power exists.

"Having considered the above constitutional provisions, it becomes important now to examine the statutory enactments, so far as applicable to this case, to ascertain whether the state board, in making the order complained of, acted within the jurisdiction and power conferred by the constitution and statutes.

"SECTION 5: 'All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed.'

"The statutory powers of the State Board are then given:

"'At such meetings to equalize the valuation of the taxable property of the several counties in this state for the purpose of taxation; and to that end, under such rules of notice to the county auditor of the county affected thereby, as it may prescribe, to increase or lower any assessment contained in the assessment book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value in money of the property assessed.'

"While it is the sworn duty of these officers to value and assess all taxable property equally and uniformly, at its full cash value, yet current history does not fail to present the fact that, through mistake, carelessness or incompetency, the grossest inequality frequently prevails in valuations; and, without a power lodged somewhere to adjust and equalize the valuations, not only might great injustice result, but also the constitutional requirements of a "uniform and equal rate of assessment and taxation on all property in the state" might be rendered a nullity.

"We are therefore of the opinion that the state board has jurisdiction in the premises, and authority, if necessary for the purpose of equalization, either to raise or lower the total valuation of the property of any county, fixed by the county board and assessor, even though it may by such action raise or lower the aggregate valuation of all the counties in the state."

In Wallace et al. vs. Bullen et al., (Okl.), 52 Pac., 854:

Tarsney, J. (after stating the facts):—The contention of defendants in error is that the action of the Territorial Board of Equalization in raising the valuation of the property in Noble county 35 per cent,, and in all the other counties in the Territory, except the county of Kingfisher, thereby increasing the aggregate of the value of all the property returned for taxation in all the counties of the Territory over the valuation fixed and returned by the several boards of county equalization to the amount of about $11,000,000, was without authority of law; that part of the taxes levied upon the property of defendants in error, which resulted from such increased valuation, was levied without authority of law, and is therefore void; * * * Was the action of the Territorial Board of Equalization complained of without authority of law?

"'The Governor, Territorial Auditor and Secretary shall constitute the Territorial Board of Equalization and said Board of Equalization shall hold a session at the capital of the Territory, commencing on the 3d Monday of June of each year; and it shall be the duty of said board to examine the various assessments and to equalize the same, and to decide upon the rate of Territorial tax to be levied for the current year, together with any other general or special Territorial taxes required by law to be levied, and to equalize the levy of such taxes throughout the Territory. And shall therefrom find the percentage that must be added to or deducted from the assessed value of each county, and shall then order the percentage so found to be be added to or substracted from the valuation of property in their

respective counties.' * * * These several officers and boards may be said to comprise the machinery of the law for exercising the taxing powers of government. Each must act within the special scope of his or its authority, and, when so acting, the *only limitation* that we can discover to the combined authority and jurisdiction of all *is that their imposition of taxation must be equal and uniform.* In assessing, they must not fix values higher than the true cash values of the property assessed; and, in levying, they must not levy a higher rate than that limited by the law. In other words, the general scope of the jurisdiction and powers of the taxing authorities is to impose taxation upon property assessed at its true cash value, and at a rate not exceeding the maximum fixed by law; and when the authorities have proceeded and acted within the scope of their authority as thus defined, and the property has not been valued for taxation beyond its true cash value, or a greater rate of taxation levied upon such value than that authorized by law, the owner has not been injured, and cannot be heard to complain, provided his property has been taxed equally and uniformly with other property in the taxing district. * * * *

"Counsel for defendants in error, while conceding that the board may increase or diminish the aggregate valuation of any county for the purpose of equalizing such valuation with the valuations of the other counties, yet contend, in the words of the statute granting it, the power 'to examine the various county assessments, and to equalize the same,' limits and restricts the powers of said board to equalizing and adjusting valuation already fixed; that the term 'assessments' is synonymous with 'valuations,' and here imports values already determined; that such valuations already fixed are the aggregate of material with which the board could deal; that they may adjust, equalize and distribute this aggregate of valuations among the several counties, but that they cannot add to its volume. In support of this construction, we are cited to the cases of People *vs.* Lothrop, 3 Colo. 428; Kittle *vs.* Shervin, 11 Neb. 66, 7 N. W. 861; State *vs.* Edwards, 31 Neb. 370, 47

N. W. 1048; Kimball *vs.* Trust Co., 89 Ill, 711; Orr *vs.* State Board (Idaho) 28 Pac. 416. A careful analysis of these cases will lead to the conclusion that none of them, unless it be the Colorado case, will even apparently support the contention of defendants in error."

"In Kittle *vs.* Shervin, 11 Neb. 66, 7 N. W. 861, the city council, the city of Freemont, sitting as a board of equalization, without any notice to the taxpayers or to the plaintiffs, raised the assessed value of each and every assessment in the city 10 per cent above the assessed value made by the assessor, and the valuation of the plaintiff's premises and all property in said city was 10 per cent. higher in its assessed value than the same was for state and county purposes assessed. The relative value of the property assessed was not changed. The Court held that the city council, sitting as a board of equalization, had no power to thus raise the assessed value of all the property assessed in said city; that such raising of valuation was not equalizing in any sense. We have already shown that the powers of a city or township board of equalization is limited to action upon individual assessments. Consequently they have no authority to increase the value of the aggregate of assessments in the city or townships by a uniform percentage, and the principle of that case bears no analogy to the case before us. In State *v.* Edwards, 31 Neb. 370, 47 N. W. 1048, the court construed and applied a statute of the state which in express terms prohibited the board of county equalization from reducing or increasing the aggregate valuation fixed and returned by the assessor, except such increase or reduction as should be incidental merely.

"In the case cited from the Supreme Court of Idaho (Orr v. State Board, supra.) the State Board of Equalization was by statute invested with power 'to raise or diminish the valuation of the several counties,' but the manner in which this should be done was clearly directed by the statute as follows: 'First, they shall add to the aggregate valuation of real and personal property of each county which they believe to be valued below its proper

valuation such percentage in each case as will raise the same to its proper valuation;' and 'second, they shall deduct from the aggregate valuation of real and personal property of each county which they believe to be valued above its proper value such percentage in each case as will reduce the same to its proper valuation." The powers of the board were clearly limited by the statute. They were authorized to raise or diminish the valuation of the several counties, but only in the manner directed by the statute, viz. they might add to the aggregate valuation of property of each county which they believed to be valued below its proper valuation, or they might deduct from the aggregate value of the property of each county which they believed to be valued above its proper valuation. The board in that case undertook to add to the valuation of the sheep in Bingham county an amount sufficient to fix a valuation thereon at the sum of $2.50 per head. * * * * The court in that case held correctly, as we think it must be conceded, that, under the special restricted authority to equalize valuations between the several counties by adding to or subtracting from the aggregate valuation as returned by the assessor and county board of equalization by a certain percentage, no authority could be deduced therefrom authorizing such board to increase or diminish the valuations fixed upon specific classes of property, and hence we find nothing in that case bearing in any manner upon the principle contended for in the case before us.

"The case of Kimball v. Trust Co., 89 Ill. 161, arose under a statute which provides as follows: 'It (the county board) shall ascertain whether the valuation in one town or district bears a just relation to all the towns and districts in the county, and may increase or diminish the aggregate valuation of property in any town or district by adding or deducting such sum upon the hundred dollars as may be necessary to produce a just relation between all the valuations of property in the county.' Rev. St. 1874, p. 873, par. 97, subd. 4. It further provided that such board should not in any instance reduce or increase the valuation

of all the towns and districts as made by the assessor, except in such manner as might be actually necessary and incidental to a proper and just equalization. The complainant in that case, in the spring of 1887, returned to the assessor of the town of South Chicago a statement of the personal property liable to taxation, and placed upon it a valuation of $500,000. It was so returned to the county clerk, without modification. The county board of equalization added 20 per cent to the assessed valuation of personal property in the town of South Chicago, but made no changes in other towns. The per cent added to personal property in South Chicago increased the aggregate value of assessed property in that town over $2,000,000, and consequently increased by a large per cent the aggregate assessed value of the entire property of the county. The 20 per cent added by the country board to the valuation of the complainant's property increased that valuation to $600,000. The state board of equalization directed that 57 per cent be added to the assessed value of personal property in Cook County, and thus the valuation of complainant's property was raised by the county board from $500,000 to $600,000, and by the state board to $942,000, and upon this latter sum was computed and extended the several kinds of taxes for the said year. *No question was raised or discussed in the case relating to the action of the state board in raising the assessment 57 per cent.* That appeared to be conceded as authorized and legal. The question was in regard to the action of the county board in making the 20 per cent increase, and that was held to be illegal because of the limitations of the statute upon the powers of a county board. * * * * Each of these cases is dissimilar in almost every feature from the case before us. Each dealt with the powers and functions of minor boards of equalizations (except the Idaho case), those of counties or cities not possessing final powers of review and correction, whose authority to increase or diminish the aggregate of valuations of property for taxation within their respective districts was by statute expressly inhibited or expressly granted and limited.

"The case cited from the Colorado court more apparently bears out the contention of defendants in error.

* * * * * * * * * *

"* * * True, the general definition of their duties is substantially the same: In our statute, 'to examine the various county assessments and to equalize the same'; in the Colorado constitution, 'to adjust and to equalize the valuation of real and personal property among the several counties of the State.' Our Territorial board is authorized to find the percentage that must be added to or deducted from the assessed value of each county, and to order the percentage so found to be added to or subtracted from the assessed values of each of the various counties of the Territory—'to be added to or deducted from the assessed value of each county.' The natural construction of this language would authorize the percentage which the board should find proper to be added to the assessed value of each or every county in the Territory, or to be subtracted from each or every county in the absence of any inhibition against increasing or diminishing the aggregate of assessed value. We think this was the intention of the Legislature. Had they intended to vest the board with power to equalize only in the sense of distributing equally among the several counties their proportion of the aggregated valuation returned, this would necessitate *both increase and decrease*, and the Legislature would have used language more apt to express such limitation or purpose Under the Colorado statutes, the board dealt only with the 'scale of valuation'. They were only authorized to act when they were satisfied that the 'scale of valuation had not been adjusted with reasonable uniformity' by the assessors. In this Territory, the board, we think, is authorized to act, not on the scale of valuation as returned and for the purpose of securing uniformity in such scale, but upon the *valuation* for the purpose of securing an honest and uniform valuation of property for taxation,—that honest and uniform valuation which the law expressly demands; that is, its assessment and valuation at its true cash value. * *

"We are supported in the conclusion we have arrived at in this case by the authority of Black v. McGonigle, 103 Mo. 192, 15 S. W., 615. * * * In that case Mr. Chief Justice Black says: 'The first contention of the appellant is that the action of the board in raising the assessed values of real estate in all the townships except one, by a single order on a per centum basis, is illegal and void. The proposition contained in this objection must, of course, be determined by the statute. Section 6672, Rev. St. 1879, gives to the board power 'to hear complaints, and to equalize the valuation and assessments upon all real and personal property within the county,' and it is then made the duty of the board 'to equalize the valuations and assessments in all such property, both real and personal, so that each tract of land shall be entered on the tax book at its true value.' * * * The law, however, clearly contemplates that all property shall be assessed *at its true value*, and if, in the opinion of the board, this has not been done, then the assessment may be increased so as to comply with the spirit and intention of the law. Where the lands in one township have been assessed at their true value, and those in another township have been assessed at a uniform lower rate, then the assessed value of the lands in the latter may be brought up to the standard of the former; and that is what appears to have been done in the present case. In such a case it is not necessary to specify each parcel of land thus increased. It is sufficient to increase the assessed value of all the lands in the particular township by one order, and this increase may be made on a per centum basis." * * * We hold that the statute creating the territorial board of equalization conferred upon that board authority to review and correct the valuations of property for taxation returned to them by the county clerks of the several counties of the territory, and to *equalize such valuation* upon the basis of the true cash value of the property, and that they may lawfully increase the aggregate valuation of property in the several counties of the territory returned by the said

several clerks of the several counties; that the several acts of said board complained of in the petition in this cause were within the jurisdiction of said board, and authorized by law; that the taxes the collection of which is sought to be enjoined were assessed and levied according to law."

In Renfrew et al. v. Webb et al., Webb et al. v. Renfrew et al., 54 Pac. 449, the Supreme Court of Oklahoma holds:

"The territorial board of equalization, in equalizing the taxes between the several counties, may take the return of any one county, which, in its judgment, most nearly represents the true cash value of all the property therein, as a basis, and may lower or raise the valuation as returned from any or all of the other counties, so as to make such valuations conform to such basis, notwithstanding that by such action the aggregate valuations of all the counties as returned may be increased or decreased; and a county board may, in like manner, take one township as a basis, and raise or lower the returned valuations of the other townships thereto, notwithstanding such action may increase or decrease the aggregate of valuations returned from the several townships.

"The limit of valuation of property for taxation is the actual cash value thereof. Any assessment of property for taxation in excess of its actual cash value is, to the extent of such excess, void. Where cattle of a taxpayer are of a value not exceeding $10 per head, and the same are, by the assessor, fraudulently, and for the purpose of causing an excessive tax to be levied thereon, assessed at $17.33 per head, and in equalizing the valuation of such property the county board of equalization increases such valuation 20 per cent., and the territorial board of equalization increases the same 40 per cent., a court of equity has power to relieve from all such assessment in excess of the actual cash value of the property."

In Bardrick et al. vs. Dillon et al., (Okl) 54 Pac. 786, it is said:

"The first contention of counsel for plaintiffs in error is that in exercising its power of equalizing the assessments of the several townships the county board had no power to increase the aggregate assessment of the county as shown by the total of the several township returns. A similar question was before this court in the case of Wallace *vs.* Bullen (decided on rehearing at this term), 54 Pac. 974, relating to the powers of the Territorial Board of Equalization, and was decided adversely to this contention. * * * There is no one subject that has received more attention at the hands of the courts than that of taxation in some of its various phases; and while a few settled rules pervade all the adjudicated cases, an exploration of the vast labyrinth of adjudications by the courts of last resort in the several States and Territories discloses the fact that one jurisdictions can derive but little aid from the decisions of another on these subjects. Each State has its own particular constitutional provisions and limitations, and its special modes of procedure. In most all, some form of appeal or review is provided for the relief of the taxpayer whose property is excessively or improperly assessed. Each has, by some form of legislative enactment, conferred certain specific powers upon its assessing officers and equalizations boards, and surrounded them with such limitations and restrictions as they have deemed prudent and judicious. These legislative provision all being more or less at variance with each other, leaves each jurisdiction to depend upon its own constitutional or statutory provisions and limitations for determining its powers and duties. * * * *

"After the returns are made from all the townships, the statute provides that the board of county commissioners shall hold a session at a fixed time 'for the purpose of equalizing the assessment rolls in their county between the several townships.' * * * This statute prescribes the power of the county board, but makes no provision as to the manner or method in which it shall perform that duty or execute the power, nor does it place any limitation on its power. The board is simply empowered to equalize the

various township rolls. Now, what does this word 'equalize' mean? It has no technical or scientific meaning. It is a word used in every-day parlance, and it is here used in its common and ordinary sense and acceptation. The purpose of having equalizing boards is that all classes of property, all parts of the taxing district, and all persons owning taxable property may bear equal burdens, and to secure equality as near as may be, under a general law. In Webster's International Dictionary "equalize" is defined, "To make equal, to cause to correspond, or be like in amount or degree as compared; as to equalize accounts, burdens, or taxes." The Century Dictionary and Cyclopedia gives this definition: "To make equal, cause to be equal in amount or degree as compared; as to equalize accounts, to equalize burdens or taxes." The word "equalize" is not found in the law dictionaries of either Bouvier or Black, but Black defines "equality" (which is the end to be reached by equalizing) as "likeness in possessing the same rights, privileges, and immunities, and being liable to the same duties." *There is nothing in the etymology, origin, or derivation of the word "equalize" that signifies any such meaning as that contended for by plaintiffs in error*, and no lexicologist, philologist, or law writer has ever attempted to impute such meaning to the word. * * * * Our statute contemplates that all taxable property shall be valued for purposes of taxation at its fair cash value; and all assessing officers and equalization boards are bound, when performing the duties imposed on them, to keep this fact in view, and not fix such values or make such additions for purposes of equalization as will increase property beyond its fair cash value. * * * * In making these additions, the aggregate valuation, as shown by the assessors' returns, was materially increased. This manner of executing the power conferred by the statute was not an unreasonable one, and is not open to any valid objection. * * * * * * *

"* * * We have carefully examined the numerous authorities cited by counsel for plaintiffs in error, which,

it is contended, support their contention to the effect that, in order to equalize tax rolls of different townships, the board must adopt the mean or average assessment as a standard, and reduce the higher and raise the lower to this mean standard without increasing the aggregate valuation as returned by the assessors. While a casual examination and reading of these cases might lead one to this conclusion, a critical examination of the decisions and of the statutes upon which they are based discloses the fact that, in every case where a court has laid down such a rule, it has been by reason of some *constitutional* or statutory provision defining or limiting the powers of the boards of equalization, and in no case has any court based such a ruling upon any definition or significance of the word 'equalize.' Our statute contains no such limitations as are found stated as the grounds for these decisions. Hence the adjudicated cases relied upon have no application to the statute here under consideration, and afford but little light in interpreting its provisions. The reasoning and argument in Gray v. Stiles (Okl.) 49 Pac. 1083, is hereby expressly disapproved, and, in so far as that case presents any rule of law in conflict herewith, the same is overruled. * * *"

In Weber et al. v. Dillon, County Treasurer, (Okl.) 54, Pac. 894, the court says:

"It (the petition) alleges that the territorial board, without any authority of law, in equalizing the several counties of the territory, increased the aggregate assessment of the territory from $24,000,000 to $32,000,000; that, in increasing the aggregate assessment of the territory from $24,000,000 to $32,000,000, the said territorial board raised the assessment of Blaine county 65 per cent, which raise, for Blaine county, amounted to the sum of $151,321, making the total assessment $384,122, instead of $232,801; that by such territorial raise the assessed value of each of plaintiffs was increased 65 per cent above its true cash value. * * *

"In this case we hold that the territorial board of equalization did not exceed its power in increasing the aggregate returns of the various counties of the territory, but that its action was clearly within the scope of its authority."

In Hacker v. Howe, (Neb.) 101, N. W. 256, the court says:

"The state board cannot, under the guise of equalization, raise valuations merely for the purpose of making increases, but when an increase results incidentally in the equalization of property, so that all property may bear its just proportion of the burdens of taxation, such resulting increase is within the legitimate exercise of the power to equalize. Surely it may not be said that, it having been ascertained that so nearly all of the property of the different counties has been assessed at its true value, in order to properly adjust and equalize there must be a reduction of a certain percentage in this larger number of counties, and a corresponding increase, and less than was ordered, in the smaller number, so that the grand total of the assessment roll should not be disturbed. While a plan or method of raising some of the counties and lowering others may generally be resorted to in order to bring about equality, yet it would, *in the present instance* be in a measure a perversion of the law to reduce *below its actual value* by far the larger proportion of the property of the state subject to taxation for the purpose of avoiding an actual increase in the total valuation of all property. The statute does not limit the state board in the matter of equalization to the aggregate value as shown by the returns of all the different counties. Its provisions are that the board may increase or decrease by percentum to be added to or deducted from the *aggregate* value of the different counties to make them conform to law. Of course, they have authority only to equalize, and to equalize is to adjust differences in value so as to bring all to a common standard, and to the end that all property

assessed shall bear its just proportion of the burdens of taxation. *Where equalization is the main object*, and the increase resulting therefrom is incidental, we think the action is undoubtedly a legitimate exercise of the powers conferred upon the board."

To the same effect see

People v. Orr. (Idaho) 28 Pac. 416.
People v. Dunn, 59 Cal. 328.
Baden v. Union Trust Co., 25 Kan. 363.

The statute under which the decision in Baden v. Trust Co. was rendered is as follows:

"SEC. 79. It shall be the duty of said (state) board to proceed to examine the abstracts of property assessed for taxation in the several counties of the state, and shall equalize the same by directing to be added to the amount of property so assessed in each county, or to be deducted therefrom such rate per cent as said board may deem equitable, but said board shall not reduce the aggregate amount."

And the Court said:

"The board having before it all assessments for taxation made upon all the taxable property, within the state, may, under the provisions of the foregoing section, equalize such assessments by increasing or decreasing the assessments made on any particular portion of the property, provided such equalization does not reduce the aggregate amount of the assessment."

And it seems that this principle is approved in New Mexico.

Territory vs. First National Bank of Albuquerque
65 Pac. 172.

Under a statute prohibiting the state board from reducing the aggregate, it is held in Ohio that the board may raise it.

State ex rel vs. Raines, 47 Ohio St. 447.
State ex rel vs. Lewis, 64 Ohio St. at p. 232.

In the latter case it was held that "no restriction is placed upon the manner of forming that opinion (the true value in money of the property) when it comes to *raising* the valuation, only so that it be to such sum or price as they may believe to be the true value thereof."

Our statute provides that the board may "raise *or* lower"—but not raise *and* lower.

The board, under paragraphs 3879-80, is *expressly* granted the power to *increase* or *diminish* the valuation of property. The only limitation upon the manner or extent of raising or lowering is that *it shall not reduce the aggregate.* The exclusion of this power is the inclusion of all other things.

Hankin v. People, 106 Ill. 633.

What is implied in a statute is as much a part of it as what is expressed.

U. S. v. Babbitt, 1 Black 58.

The power to increase or decrease the valuation of a class of property.

One of the most significant provisions of our statute is that which requires that the clerk of the County Board of Equalization immediately after the adjournment of its July meeting shall make an abstract of the assessment

roll, containing the whole number of acres of land other than city and town lots, and the valuation thereof; the value of the improvements thereon; the total valuation of city and town lots; the valuation of the improvements thereon; the miles of railroad in the county, and the value thereof; the number of horses and their total value; the number of mules and their total value; the number of asses and their total value; the number of cattle and their total value; the number of sheep and their total value; the number of swine and their total value; the number of goats and their total value; the gross amount of all other property, and transmit a duplicate thereof to the territorial auditor (Par. 3877 R. S. 1901). That paragraph further provides "that the Territorial Board of Equalization is authorized to diminish or add to the above list."

What can be the purpose of this classification? It is certainly not simply to gratify the curiosity of the board, nor is it merely for statistical purposes. The abstract is to be supplied to the board as the basis upon which it can equalize the valuations. If that board could deal only with the aggregate value of all the property, why classify, and why authorize the board to add to the list?

Under the contention of appellant the board may examine into the valuation, say, for illustration, of horses in the various counties, and, if it should find that horses were valued too low in a county, either in fact or relatively, to those in other counties, then charge the deficit to all the property in that county. Suppose horses in a county are found to be valued at 10 per cent of their cash value, while the average in other counties is 75 per cent of their cash value, and suppose all other property in the county is fairly valued. In order to remedy the

inequality resulting from the under valuation of horses in a county, the rule contended for by appellant requires not that the valuation of horses in a county shall be raised to the average standard of value, but that all property in a county shall be raised. The absurdity of this is apparent. Such a rule in the first place does not raise the valuation of horses in a county to the standard in other counties, but it does raise the value of all other property in that county, which, as we have supposed, was already up to the standard of other counties. Is that equalization? "All other property" was high enough relatively to other like property in other counties. Yet they say, raise it so that the under valuation of horses may be equalized. The result is that "all other property" in a county is raised above the relative standard of other counties, and horses are necessarily left below the standard of valuation of horses in other counties. This is so palpably unjust that it ought to obtain no countenance. We admit there are some just such absurdities in the practice in some of the states. One state, at least, has by statute adopted the rule that if the aggregate of property in a county is below what the state board deems right, the board equalizes by increasing the rate of taxation for state purposes in that county. It is true that the legislature might have limited the board to raising or diminishing aggregate valuations of counties, and the objection to its manifest unfairness might be answered by saying that any system of taxation must in practice result in some inequalities. But it seems to us evident that our legislature intended to take the advanced step of classifying property and applying the raise or diminution to classes rather than to the aggregate, and thereby minimize the danger of inequality

as much as possible; and for this reason the board was authorized to increase the number of classifications. Just as the number of classes is increased just so much more is it possible to justly equalize valuations, and is injustice diminished.

If it is true that the Territorial Board could only raise the aggregate value of all property in a given county, then, of course, in the attempt to tax the mines at anywhere near their actual value it would be necessary to raise the valuation on cattle, sheep, cultivated lands, town and city lots, and all other property, which may already have been valued high enough.

If it should be found for instance, that the patented mines of Yavapai county were not valued within $1,000,000 of their value, based not upon their actual but upon the relative value to other property in that county—suppose we say that this was true, then the rule contended for by the respondents is that this $1,000,000 shall be added not to the valuation of the mines, but to all the property in the county.

And if in Yavapai, and in Cochise, Gila, Graham and Mohave, Pima and Santa Cruz and Yuma, it were found that mines were valued at $10,000,000 less than their value, the valuation in those counties for the purpose of equalization must be raised $10,000,000; and the rule contended for by respondents would require that the valuations of property in Maricopa, Pinal, Coconino, Apache and Navajo must be reduced $10,000,000 in order to preserve the aggregate as returned by the local boards. Or possibly the mines should escape their fair proportion of the burdens, as the appellant seems to think.

There has been some suggestion that the raise ordered by the board, being horizontal, places the value of unpro-

ductive mines too high. The record in this case negatives that claim. When town and city lots are returned at a total valuation, it can not be assumed that every town and city lot in that county is equal value, or has been so valued by the assessor, and so passed the local board of equalization. It is contrary to our common knowledge to assume that every acre of the number of acres returned at a total valuation in any county, is in fact of equal value with every other or, that it was so assessed. And so with the items of other classes of property. It is to be presumed that their relative value was properly equalized amongst the various individual items of a class, and of course a percentage raise or diminution will not affect the relative value of each item of one class to every other item of that class.

If in fact all patented mines in any county have been assessed, without regard to their productiveness or unproductiveness, indeed without regard to their value, and nevertheless the aggregate of them all is grossly undervalued, it is but another instance of the flagrant wrongs perpetrated by the local taxing officers, and just such a wrong against which our statute attempted to provide, and placed it within the power of the board to protect the interest of all other taxpayers by raising to its just relation the valuation of mines.

In Territory v. First Nat. Bank of Albuquerque, 65 Pac. 173, (Supreme Court of New Mexico. August 3, 1900), the Court says :

"The board at the same time took the following action, as appears from the stipulation : 'In the matter of the assessment of the First National Bank of Albuquerque, New Mexico ; the Sierra County Bank : (and twelve other banks), it appearing to the board from the assessment rolls

furnished to it by the auditor that the scale of valuation of shares in the capital stock and surplus of banks in said counties has not been made with reasonable uniformity by the different county assessors of said counties: Now, therefore, the said board, in order to adjust and equalize the said assessment rolls in said counties on shares of capital stock and surplus of banks, hereby raises the said assessment on said shares of the capital stock of said banks to the uniform amount of sixty per centum of the par value of said shares of the capital stock and surplus of each of said banks, so that the same will be of uniform value throughout the territory.'

"The return made by the bank fixed the valuation of the capital stock at $75,000, but it appears from the declaration, the additional assessment, and the papers in the case that the capital stock of this bank was really $150,000, and that adding the $15,000 of capital stock required by the territorial board to be added to the amount stated in the return, of $75,000, the amount fixed by the board upon which the bank should be taxed was $90,000, or 60 per centum of the par value of the capital stock of the bank. The power of the board to take this action is called in question, and the provisions of the statute conferring its powers must determine this question. For the purpose of this case, it is only necessary to examine section 2636, Comp. Laws 1897, as this is undoubtedly the section conferring the power exercised by the board, if such power exists. Section 2635 is referred to by counsel for the plaintiff, but that section refers to the original jurisdiction of the board to assess railroad, telegraph, telephone, and sleeping-car companies and is not in point in this case, as the making of an original assessment was not attempted. Section 2636 requires said board to meet annually on the second Monday of September as a board of equalization and appeal only. Their duty as a board of equalization is prescribed therein as follows: 'It shall be the duty of the auditor of the territory at such meeting to furnish said board with the assessment roll of each county of the

territory for their inspection and examination for the purpose of ascertaining the rate of assessment and valuation of property therein, and whenever they are satisfied that the scale of valuation has not been made with reasonable uniformity by the different county assessors the said board shall adjust and equalize the said assessment rolls by raising or lowering the valuation thereof so that the same shall be of uniform value throughout the territory. * * *'

"It is well to keep in mind at the outset that the county board of equalization and the territorial board of equalization have entirely different jurisdictions. One acts, necessarily, within the county which the board represents. The other is given extended jurisdiction embracing the the entire territory. The territorial board may consider and decide cases of appeal under the jurisdiction conferred upon it, but in addition to this the territorial board is given original and enlarged jurisdiction to determine such questions as affect assessments of property in the different counties, and also with regard to the effect of those assessments throughout the territory to secure uniformity. We see no reason why the territorial board should not exercise the power, if conferred by the statute, regardless of whether an appeal was taken from the action of the county board or not.

"The County Board of Equalization acts with a view of uniformity within the county, without any regard to the assessments, even of the same kind of property in other counties of the Territory; and the want of uniformity in the assessment of the different classes of property returned by county assessors can never be known until the assessment rolls of the different counties are compared by the Territorial Board of Equalization. If, because no appeal is taken from the action of the County Board of Equalization, the Territorial Board of Equalization is powerless to either increase or decrease valuations made by the assessor, approved by the County Board of Equalization, *then the Territorial Board of Equalization would be powerless to secure the reasonable uniformity required by the statute.*

"This section of the statute, in our opinion, confers jurisdiction upon this Territorial board to so adjust and equalize the assessment rolls by raising or lowering the valuation of certain classes of property as may be necessary to secure uniformity throughout the Territory. Counsel for the appellant attaches much importance to the words 'assessment rolls,' used in this section of the statute, and contends that all the Territorial board has power to do is to increase or diminish the total assessment of the respective counties; that is to say, if the scale of the valuation is lower in one county than in others, as shown by the total assessment of that county, the board must increase or diminish the entire assessment of the county, and has no power to alter the valuation of any particular class of property borne upon the assessment roll of one county so as to make it uniform with the scale of valuation fixed by the assessor of another county upon the same class of property. This construction of the language of the statute is, in our opinion, erroneous. To follow the rule contended for by appellant's counsel would do a great injustice. For instance, the assessment roll contains property such as real estate, animals, numerous kinds of personal property, and also the capital stock of banks, in counties where there are banks. To contend that the assessment of the entire county must be increased or diminished, in order to equalize it with the assessment of other counties in the Territory, would require the raising of the valuation and increase the taxation upon all classes of property enumerated in the assessment roll of the county. Take, for instance, the item of real estate. The difference of the value of real estate in the different counties is very great; and as to it the local board and assessor are better able to place a proper value upon it than the Territorial board, because its value depends largely upon local conditions. It would seem unreasonable, and therefore not within the legislative intent, to say that all the owners of real estate in the county should be compelled to submit to an increase in the valuation fixed upon

their real estate, because bank stock or other property was assessed below its proper value. Much more just and reasonable is a construction which would authorize the board to take, for instance, the capital stock of banks, the valuation of which is approximately the same throughout the Territory, and adjust and equalize the valuation of this particular class of property so as to secure uniformity in its valuation throughout the Territory; and so as to the valuation of other classes of property. Indeed, the language of the section referred to specifically confers power upon this board to raise and lower the valuation of property found upon the assessment rolls so as to secure uniformity in the scale of valuation throughout the Territory, and it seems to necessarily follow from this language that the board is required to compare the scale of valuation throughout the Territory, and that this raising or lowering does not refer to the raising and lowering of the entire tax roll of the county, because to increase the valuation of the entire tax roll of all the taxable property assessed in the county would, in many instances, do great injustice to those parties whose property was listed at its full value.

"It is true that in equalizing the assessments of this particular class of property in the different counties of the territory, by increasing or lowering the scale of value placed upon such property by the different assessors, *they necessarily changed the value and the assessment* of the property of the defendant; but this was only indirectly, and was a necessity to accomplish the purpose for which the board was established.

"The board certified that the scale of valuation upon bank stock in the different counties was not uniform, and they fixed a uniform scale of valuation for the stock of all banks in the Territory. By this means the result of the equalization of this class of property would fall upon the owners of such property, and this is just as it should be. It necessarily affects individual assessments, and there could be no more equalization of the assessments of property that would not, in that sense, operate to change

individual assessments; but this effect is unavoidable and, as individuals affected by an equalization of values have no just ground of complaint if the board has such power conferred upon it in the interest of the entire territory, individual interest must yield to the public good, as it has been found necessary to establish some method of adjusting and equalizing the assessment of property in many, if not all, of the states and territories.

"We are of the opinion that the board acted clearly within the scope of its authority in thus equalizing the scale of valuation upon bank stock, and they had a perfect right to alter the scale of valuation placed upon such stock by the assessor and the board of equalization of Bernalillo county, regardless of the question of appeal."

See also State v. Nichols. (Wash.) 69 Pac. 775.
Salt Lake City v. Armstrong. 49 Pac. (Utah) 641.

But while the reasoning of these decisions is unanswerable, and of controlling force, the strongest evidence of the legislative purpose to authorize the action taken by the board is to be found in its own utterances and conduct. First it expressly declares that the board may increase or diminish the *valuation* (not the aggregate valuation) of property *in* any county (not *of* any county) as much as in its judgment may be necessary to produce a just relation between all the valuations of property in the territory. What *kind* of property? What *class* of property? What *quantity* of property? Manifestly, any kind, any class, that has been returned to it, and in such quantity as may be comprised in any class or classes it finds it necessary to raise or lower in order to bring all valuations into a just relation with one another. The language itself is so plain as to scarcely need construction. But to concede, for the purpose of argument only,

that the meaning without external aids, might fairly be considered doubtful, let us apply some of the recognized rules of statutory construction. That it may increase or diminish values must be admitted without argument. Under the rules of construction can the statute be given a meaning that precludes it from raising or lowering by classes of property?

Reverting to the clause empowering the board to increase or diminish the valuation of property *in* any county, etc., the Supreme Court of California, in Wells, Fargo & Co. v. Board of Equalization, 56 Cal. 196, held that the words "to equalize the valuation of the taxable property *in* the county" [the italics are theirs] of themselves conferred upon county boards the power to compare the individual assessments upon the assessment roll, one with another, and make them equal. That the words "to equalize the valuation of the taxable property *of* the several counties," of themselves, conferred upon the state board the power to compare the assessment roll of each county with the roll of each and all the others, and make them conform to their true value. In other words, had the state board been empowered to "equalize the valuation of the taxable property *in* the county," as our territorial board has been, it seems that the court would have held that it had the power to equalize *individual* assessments. We do not claim that our legislature conferred upon the board this degree of power, even though the language used may fairly import it. We only contend that it may equalize by classes, because the county board is given the power, and probably the exclusive power, to equalize individual assessments. The board, in short, is granted the power to equalize all kinds or classes of property, *ad libitum*, subject only to the

limitation that individual assessments may be equalized by the local boards. Thus a judicial construction has been given to these important phrases.

The legislature has recognized in express and unequivocal language that the board has the power to change the valuation of classes of property.

Paragraph 3874, Stat. 1901, provides that, "No assessor, board of supervisors, or the Territorial Board of Equalization shall assess any real estate at a less valuation than seventy-five cents per acre, nor shall any board of equalization reduce the valuation of any real estate below seventy-five cents per acre."

It may be urged that the enactment is ineffective in so far as it assumes power to control the judgment of assessing officers as to the valuation of property. But it is, nevertheless, valid as an expression of the legislature recognizing that the board had been given and would exercise the power to assess and *change* the valuation of real estate (undeniably a class of property) and that it ratified and approved the practical construction that had theretofore been given the statute by the officials charged with its execution. Much strength is added to this argument when it is remembered that Paragraph 3874 was not enacted until 1901, although the Board had been equalizing classes of property since 1887. It must be conclusively presumed, then, that Par. 3874 was enacted with legislative knowledge and approval of the construction theretofore given the former statute by the executive officers, and expressly recognized and approved it.

"In cases of doubt and uncertainty the declaration of

the legislature, or practical construction by the executive department, gives a certain sanction and will be influential with the courts.

"Where the lawmaker declares its own intention in the enactment of a particular law or defines the sense of the words it employs in a statute, it not only exercises its legislative power but exercises it with a plausible aim, for it professes to furnish aid to a correct understanding of its intention. The legislature in passing an act may declare its meaning and construction, and such declaration will be binding upon the courts."

Sutherland Stat. Cons. Par. 358, and many cases cited.

Intention of the legislature, when discovered, must prevail in the construction of statutes.

Brown vs. Barry, 3 Dall. 367.

Lawmaker's intent is law:

Jones vs. Guaranty Co., 101 U. S. 625.

Beley vs. Naphtaly, 169 U. S. 360.

"A provision which is special, by pointing to a particular act and declaring for what definite purpose it was enacted, or defining certain words or phrases, has the fullest effect. It is a part of the law, and must be construed and applied accordingly, and the act will have a construction, and the words and phrases a meaning, in harmony with the defining provisions, even though otherwise they would have a different effect."

Sutherland Stat. Cons. Par. 360, and ten cases cited in note 71.

The words and meaning of one part of a statute may lead to and furnish an explanation of the sense of another.

Id. Par. 368, note 55.

The legislature, in re-enacting the language of the Act of 1887 in the revision of 1901, recognized and adopted the practical construction by successive Boards of Equalization.

The avowed legislative purpose in providing for the code commission whose labors resulted in our present code, was to "revise the laws of the Territory of Arizona and to eliminate therefrom all crude, contradictory and imperfect matter, and also to insert such new provisions as they may deem necessary and proper." In other words, to correct errors and to eliminate unsatisfactory laws. The Code Commission was composed of eminent lawyers, including John C. Herndon, of Prescott; L. H. Chalmers, of Phoenix; and Judge C. W. Wright, of Tucson. The death of Judge Wright caused a vacancy on the commission which was filled by the appointment of a member of the present Supreme Court of the Territory—Hon. Richard E. Sloan. Hon. Frederick S. Nave, now also a member of that Court, was clerk of the commission throughout its term. These men, all distinguished for their ability and learning, included the statute in question here, as a part of the new code, and it was consequently re-enacted. The reflection cannot be indulged that any of the commissioners, or the clerk, were ignorant of the construction that had been given the statute for many years by the executive officers, therefore it must be presumed that the commission approved it, as wise and beneficent, and recommended its continuance under the same practical construction that it had been receiving. It must also be presumed that the legislature knew of the construction, it having been continued for so long a time, and relating to a matter of such

great and general importance, and by its re-enactment approved it. A re-enactment under these circumstances makes the former construction a part of the law itself, and renders it binding upon the court.

"In the interpretation of re-enacted statutes the courts will follow the construction they received when previously in force. The legislature will be presumed to know the *effect* which such statutes originally had, and by re-enactment to intend that they should have the same effect.

In re Guggenheim Smelting Co., 121 Fed. 153.

Sessions v. Romadka, 145 U. S. 29.

Fiske v. Henarie, 142 U. S. 459.

And many other cases cited in Sutherland Stat. Cons. Par. 403, N. 98.

"This rule has been held to apply to the re-enactment of a statute which has received a practical construction on the part of those who are called upon to execute it."

Sutherland Stat. Cons. Par. 403.

Bloxham v. Consumers, Lt. Co. 36 Fla. 519.

Commonwealth v. Grand Central, 97 Ky. 325.

State v. Moore, 50 Neb. 88.

Price v. Lancaster Co., 189 Pa. St. 95.

"In order that re-enactment should have this effect, the practical construction must be an allowable one, and doubtless would have to be in a matter so important or be so long continued that the legislature would presumably have knowledge of it."

Sutherland Stat. Cons. Par. 403.

"The legislature is presumed to be cognizant of such construction and after long continuance, without any legislation evincing its dissent, courts will consider themselves warranted in adopting that construction."

Sutherland Stat. Cons. Par. 474, N. 77.

"And where the statute is re-enacted without change, the presumption is strong that the legislature intended it to bear the same construction that had previously been given it."

Id. 474, N. 78.

Since 1887 the legislature has frequently changed the laws relating to taxation. In fact, portions of it have suffered many changes, and very little, if any, of the revenue law as it then stood has escaped amendment or elimination. These changes were not accidental—they were deliberate. It seems fair to assume that the legislature must have been dissatisfied with the operation and effect of these laws (it must be presumed to have known *how* they operated and what effect they had) else it would not have changed them. But it is highly significant that the law in controversy, in so far as it relates to the power of the board, has never been changed since its first enactment by our legislature. How it has operated, what effect it has had, what powers have been exercised under it, have been matters of common knowledge for many years. The legislature knew of all this. It has manifested its satisfaction with and approval of it all (1) by steadfastly declining to modify or repeal it, although often amending other parts of the same act; (2) by re-enacting it word for word after its practical operation for years; (3) by the sanction given in the language used in the enactment of Paragraph 3874 in 1901.

Finally the practical construction given the statute by successive Boards of Equalization is of itself controlling.

If, however, none of these evidences of the legislative purpose existed, we insist that still, under the weight to be given to the long-continued practical construction of this statute by the executive officers, such construction is controlling in this case. We contend that where the construction has been continuous and unbroken for eighteen years; where such construction has been acquiesced in by all officers charged with any duty respecting the execution of the statute; where it has been advised or acquiesced in by every Attorney General of Arizona since 1887; where the taxpayers of the entire Territory have paid taxes year after year upon valuations of property as increased or decreased by classes; where the courts have tacitly sanctioned it and the best lawyers in the Territory have, as members of the Code Commission, recommended its continuance; where the matters involved in and affected by such construction are of vital importance to the people of the Territory, and where it plainly comports with the evident meaning of the statute, it has become a part of the law itself. It cannot be challenged. It cannot be overthrown. It is absolutely binding upon the courts.

The reports of this court present an unbroken and unvarying line of decisions to this effect:

Stuart v. Ladd, 1 Cr. 299, is a leading case upon this question, the contention in that case being whether the Supreme Court judges had jurisdiction while sitting as circuit judges without special commissions, such having

been the practice. The court held that by reason of acquiescence therein, for fourteen years, such construction would not be overturned, saying :

" Another reason for reversal is, that the Judges of the Supreme Court have no right to sit as circuit judges, not being appointed as such, or, in other words, that they ought to have distinct commissions for that purpose. To this objection, which is of recent date, it is sufficient to observe, that practice and acquiescence under it for a period of years, commencing with the organization of the judicial system, affords an irresistible answer and has indeed fixed the construction. It is a contemporary interpretation of the most favorable nature. This practical exposition is too strong and obstinate to be shaken or controlled."

" Contemporaneous construction, after the lapse of time, without change of that construction by legislative or judicial decision, has been declared to be generally the best construction. It gives the sense of the community to the terms made use of by the legislature. * * * The strongest evidence that it has been rightly explained in practice. A construction under such circumstances becomes estalished law."

Hahn v. U. S., 107 U. S. 402.
Opinion of Justices, 126 Mass. 551.
Cohen v. Va., 5 Wheat. 264.

At page 659 of the 21st Sup. Ct. Rep. the Court after having collected and grouped the authorities says :

" From this resume of our decisions it clearly appears that practical construction is relied upon only in cases of doubt. Where there was obviously a matter of doubt we have yielded assent to the construction, placed by those having actual charge of the execution of the statute."

Fairbanks v. U. S. 181 U. S. 311.

The twenty-fifth section of the patent act of 1870, having been immediately construed by the Commissioner of Patents according to the ordinary and natural meaning of the words, and having been substantially reproduced in section 4887 of the Revised Statutes and never amended, this court held that it would not, after a lapse of twenty-five years, adopt a different construction. The court on page 518, Vol. 15, Sup. Ct. Rep. says:

"The Revised Statutes of 1874 were adopted, it must be presumed, with the knowledge on the part of Congress of the construction previously placed by the patent office upon the twenty-fifth section of the Act of 1870. This presumption is strengthened by an examination of the act approved February 18, 1875, entitled, 'An Act to correct errors and to supply omissions in the Revised Statutes of the United States' (etc). * * That Act upon its face shows that the entire revision of 1874, after it took effect, was carefully re-examined for the purpose of ascertaining whether there were errors or omissions in the work of revision."

Bate Refrigerating Co. v. Sulzberger, 157 U. S. 1.

"A contemporaneous construction by the officer upon whom was imposed the duty of executing those statutes is entitled to great weight; and since it is not clear that that construction was erroneous it ought not now to be overturned."

U. S. v. Philbrick, 11 U. S., 7 Sup. Ct. Rep. at page 417.

Practical construction of a statute acquiesced in for a long time controls.

McKeen v. Delaney, 5 Cr. 92.

U. S. v. Bank of North Carolina, 6 Pet. 39.

Surgett v. Lapice, 8 Howe, 68.

Union Insurance Company v. Hoge, 21 How. 66.

And is of greater weight where participated in by Attorney General.

Havemeyer v. Iowa Company, 3 Wall. 302.

Also see Blake v. National Bank, 23 Wall. 321.

When act is doubtful its practical construction by a department is entitled to great weight, but otherwise when clear:

U. S. v. Alger, 152 U. S. 397,

Bate Refrigerating Company v. Sulzberger, 157 U. S. 34.

Hewitt v. Schulz, 180 U. S. 156.

Where there is merely doubt as to the soundness of contemporary practical construction of statute by executive department it should not be overruled except for cogent reasons.

U. S. v. Finnell, 185 U. S. 252.

In case of ambiguity, contemporaneous construction not only of courts but of departments and executive officials is *controlling*.

Schell v. Fauche, 138 U. S. 572.

See *especially* on this point.

Sutherland Stat. Cons. Par. 478.

Houston and Texas Cent. Railway v. State, 62 S. W. 114.

This case construes a land grant in accordance with the practical construction.

Held that Congress evidently did not, in re-enactment of 1888, intend to overthrow the construction theretofore placed on the statute by the Public Printer.

U. S. v. Barringer, 188 U. S. 583.

Practical construction prevails over the mere letter of the law.

Potter v. Hall, 189 U. S. 300.

"We think the contemporaneous construction thus given by the executive department of the government, and continued for nine years through six different administrations of that department—a construction which though inconsistent with the literalism of that act, certainly consorts with the equities of the case—should be considered as decisive in this suit."

U. S. v. Alabama, 142, U. S. 615.

Construction followed—"But where there has been a long acquiescence in a regulation and by it rights of parties for many years have been determined and adjusted, it is not to be disregarded without the most cogent and persuasive reasons."

Robertson v. Downing, 127 U. S. 607.

"The principle that a contemporaneous construction of a statute by the executive officers of the Government whose duty it is to execute it is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly imbedded in our jurisprudence that no authorities need be cited to support."

Pennoyer et al. v. McConaughy, 140 U. S. 1.

"A contemporaneous (construction) is generally the best construction of a statute. It gives the consent of a community to the terms made use of by a legislature. If there is ambiguity in the language, the understanding and application of it when the statute first comes into operation, sanctioned by long acquiescence on the part of the legislature and judicial tribunals, is the strongest evidence that it has been rightly explained in practice."

Packard v. Richardson, 17 Mass. 143, 9 Am. Dec. 123.

In Bloxham, etc., v. Consumers Electric Light & St. R. R. Co. reported in 36 Fla. 519, 51 A. St. Rep. 44, a case wherein the R. R. Co. tested the right of an auditor to assess its property, the court says:

"The taxes for many years have been paid under such assessments without objection; thousands of dollars have been so collected, and no attack whatever has been made upon the validity of such assessment. This long prevailing custom is a matter of which the court can take judicial notice. Westbrook v. Miller, 56 Mich. 148. It is notorious that acts for the general collection of revenue are generally formulated by or under the advice of the comptroller of the state. Since this method of assessing taxes upon street railroads has been in force, the legislature has several times, repealing former acts, re-enacted the same provisions, thus giving legislative sanction to the practical construction of the act by the department of the state government which has charge of the assessment and collection of taxes from railroads. * * *

"The question involved is the method of taxation of the property in dispute. No question is raised of the liability of the property to taxation. No showing is made of any double assessment, or unequal, unjust or oppressive taxation. The taxes on the property for the year for which the assessment was made have not been paid. The property has not discharged the burden of taxation which rests upon it as upon all other property in the State not specially exempted by law. In such a case we think the greatest deference and respect should be paid by this court to the long-prevailing construction of the statute made by the executive department of the State government, and we will not interfere with the same. We do not rest our conclusion upon the case of Westbrook v. Miller, supra, but have examined many other authorities upon the subject, which practically unanimously agree with that case.

"In the case cited from 41 Ga. the Court said, adopting the practical construction of a stautute made by the

executive department of the government, that if the matter was before them as an original, independent proposition, they would be inclined to hold diffenently, but yield their own views to such practical construction."

See also State v. Grey, (Nev.) 32 Pac. 192.
Kelly v. Multnomah County, 22 Pac. 1110.

In Auditor etc. v. Cain, 61 Southwestern 1016-17 the Court says:

"We gave the same effect to long-continued contemporaneous interpretation or construction of a statute by the co-ordinate branches of government in Pennington v. Woolfolk, 79 Ky. 13, and such, indeed, is the great preponderance of authority of the other states and of the text writers on the subject."

(In that case such a construction was followed).

The rule has been applied in New York even in the construction of a penal statute. In People v. Adelphi Club, 31 L. R. A. at page 514 the Court says:

"In this connection the construction placed upon a statute penal in character, by public officers charged with the duty of executing its provisions for many years may properly be considered in determining the legislative intention. [Cites authorities]. Upon this subject the evidence shows that clubs in this state have existed for a long period, that they have not been required to take out a license, and yet it is a well known fact that they have kept on hand stocks of liquors which they distributed to their members. Was it then intended that the distribution of liquors by a club among its members should be a sale within the contemplation of the statute? If so commissioners of excise, police officers and district attorneys have for many years neglected their official duties."

In re Warfield, 22 California, on Page 71, the court affirms certain probate practices, although contrary to the letter of the statute, by reason of acquiescence therein from the year 1850 to the year 1855.

"We cannot shake a principle which has so long and extensively prevailed. If the practice originated in error, yet the error is now so common that it must have the force of law. The legal ground on which this provision (practice) rests is that long continued usage furnishes a contemporaneous construction which must prevail over the mere technical import of words."

Rogers v. Goodwin 2, Mass. 475.

"The rule adopted by the assessors in this state *has grown into a custom* and has been tacitly sanctioned by every department of the government for a long course of years, and *it is now too late to challenge it.* Even so late as the last special session of the legislature, that body, by clear implication, acknowledged the custom and yielded to its influence."

Board of Supervisors of Bureau Co. v. Chicago etc. R. R. Co., 44 Ill. p. 239.

The court will take judicial notice of such a custom.

Bloxham v. Consumers' Electric R. R. Co. 36 Fla. 519, 51 Am. St. Rep. 44.

The court will also take notice of another custom involved in this case, to wit: The custom of assessors to assess property for taxation at less than its actual value.

R. R. & Tel. Co. v. Board of Equalization. 85 Fed. 302.

Board of Supervisors of Bureau Co. v. Chicago, etc., R, R. Co., 44 Ill. at page 239.

Guenther's Case, 19 Fed. 399.
Cummings v. Bank, 101 U. S. 153, at page 162.

The supreme court of Arizona had very strongly intimated its approval of all that is contended for by the territory in this case. In the Copper Queen Case (71 Pac. 907) *supra*, the court says:

"To hold that the court, in redressing a wrongful overvaluation of property, should conform to the valuation which the taxing officers have made upon other similar property, and not to *the statutory requirement that all property should be assessed at its full cash value*, would result in an additional wrong being done to the owners of property which may not fall within the *class* in which the discrimination is made. Hence to say that, because it may be the custom, or may be the *deliberate plan and system of the taxing officers of Cochise county*, or in the territory, to tax patented mining claims at $5 per acre regardless of their cash value, the patented mines of plaintiff should be so assessed, would be to disregard the rights of the owners of other *species* of property to have the burdens of taxation uniformly and equally distributed *upon the basis of the cash value of all property subject to taxation.*"

We may then summarize as follows: The construction given the statute by the Territorial Board of Equalization finds its warrant and sanction:

1. In the language and manifest purport of the statute itself.

2. In contemporaneous construction running for eighteen years and acquiesced in by all concerned.

3. In the legislative construction afforded by the reenactment of the statute in 1901 with full knowledge of the construction it had received at the hands of the executive officers since 1887.

4. In the legislative sanction of the power to effect the assessment of classes of property apparent in the enactment of Paragraph 3874, 1901.

5. In the judicial decisions cited herein.

6. In its obvious logic, justice and equity,

Paragraphs 3879-80 were not adopted from Colorado.

It is erroneously asserted by appellant, however, that paragraphs 3879-80 "were enacted and adopted from the Colorado statute after an interpretation thereof by the Court of last resort of that State." The case of People v. Lothrop, 3 Colo. 428, is cited and relied on in support of this contention.

In Texas & Pac. Ry. Co. v. Humble, 181, U. S. 57, this court (at page 65) seems to recognize the principle that there must be some evidence of adoption aside from mere similarity of language. The intent of the legislature is the thing to be ascertained and certainly there should be some evidence of intent to adopt language carrying with it a meaning given by judicial construction. Here the Supreme Court of the Territory, which must be regarded as being fully advised as to the history of the legislation, has held that the paragraphs of the statute in question were not adopted from Colorado, and such authoritative declaration as to a matter of local legislative history, we submit, should be accepted by this honorable court in the absence of any evidence of adoption.

But a mere reading of the Colorado statute in force at the time the Lothrop case was decided disposes of the notion that our legislature adopted either its substance or the interpretation placed upon it theretofore. Ours is so essentially different from that of Colorado, as to clearly

denote a different intent. The difference is shown in the following comparison:

Colorado Statutes 1877.

2282. (Sec. 43). Said board shall ascertain whether the valuation of *real estate* in each county bears a fair relation or proportion to the valuation in all other counties of the State, and on such examination they may increase or diminish the aggregate valuation of *real estate* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of real estate in the State; but in no instance shall they reduce the aggregate valuation of *all the counties* below the aggregate valuation as returned by the clerks of the several counties.

Revised Statutes Arizona 1887–1901.

3880. (Sec. 50). The said board shall ascertain whether the valuation of *property* in each county bears a fair relation or proportion to the valuation in all other counties in the Territory, and on such examination they may increase or diminish the valuation of *property* in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of *property* in the Territory; but in no instance shall they reduce the aggregate valuation of all the counties below the aggregate valuation as returned by the Boards of Supervisors of the several counties. And said board shall at the same time fix the rate of taxes for Territorial purposes which is to be levied and collected in each county.

Our legislature may have used the *form* but it studiously omitted the words limiting the board's jurisdiction to action upon the "*aggregate* valuation of real estate," and with equal deliberation extended its power to action upon the valuation of property, not the property *of* any county, but the property *in* any county. Obviously, also, to any *class* of property established by statute or by the board pursuant to the statute. See paragraph 3877. Had our legislature intended to adopt the Colorado statute it would have done so. It saw fit to do otherwise. It employed different phraseology with widely different meaning. Suppose that in 1887 our legislature had

adopted *verbatim* the Colorado statute then in force, and that in 1901 it had enacted our present statute for the first time. Would any court entertain the proposition that no effect should be given the amendment, or that the language last employed was susceptible of the same construction given the former? The matter is too plain to deserve argument.

"A deliberate or material change of expression must be taken *prima facie* to import a change of intention."

23 Am. & Eng. Ency. Law (Old Ed.) 373 and cases cited in Note 2.

"The natural presumption is that the phraseology of the statute was changed in order to change its meaning. The very fact that the prior act is amended demonstrates the intent to change the pre-existing law, and the presumption must be that it was intended to change the statute in all the particulars touching which we find a materia change in the language of the act."

U. S. v. Bashaw, 50 Fed. 749, at page 754.

"If the legislature use words which have received a judicial interpretation, they are presumed to be used in the same sense unless the contrary intent can be gathered from the statute. But where the same language is not preserved, but is substantially varied, it shows a different intention."

Lewis Sutherland Stat. Con., par. 399.
Rutland v. Mendon, 1 Pick. 154.
Wills v. Russell, 100 U. S. 621.
Pingree v. Snell, 42 Maine 53.

It is only where the statute is adopted *without* change that the former construction is ever followed.

Goldman v. Sotelo, 68 Pac. 558.
Gardner v. Henrietta, 173 U. S. 123.

Construction in Lothrop Case would not be binding upon this Court even if our statute had been adopted verbatim from that state.

Even if the sections referred to had been taken *verbatim* from the Colorado law, the interpretation placed upon them in Colorado would not be binding in Arizona for the following reasons:

1. The rule that construction should follow the courts in the state from which the statute is adopted is not an absolute one. The proper construction is always the one required by the obvious meaning of the statute.

Coulam v. Doull, 133 U. S. 216.
Whitney v. Fox, 166, U. S. 647.

2. The construction placed upon the Colorado statute in the Lothrop case was based upon the ground that the constitution of that State lodged the power of fixing valuations solely in the Assessor. The Court says, on page 466: "Looking then to the provisions of the *constitution* and the statute, we are clearly of the opinion that the power to fix and determine the valuation of taxable property is lodged by them in the Assessor and the Board of County Commissioners of the several counties of the State," etc.

And on page 463, the Assessor is referred to as a *constitutional* officer. And the Court in the same paragraph doubts whether it is competent for the Legislature to take from the County Assessors the substantial control of valuations of property for State taxation and vest it in a central authority.

No such question arises here. Arizona has no constitution and it may vest the power of fixing, reviewing and correcting valuations in such agencies as it may deem expedient.

Therefore, the *conditions* were not the same in Arizona in 1887 as they were in Colorado. Had Colorado lacked a constitution when the Lothrop case was decided, can it be assumed that the decision would have been the same? We think it may fairly be doubted, in view of the stress laid by the Court upon the constitutional provisions in that case. It was, then, the construction *of a constitutional*, rather than a *statuory* provision, and it is certain that the cases cited by counsel, as having relied upon and following the Lothrop case, do so *solely* upon the ground that the Lothrop case afforded a construction of constitutional provisions not different from their own, and from which their own were adopted. This is conspicuous in the Montana cases cited and strongly relied upon by counsel. (State vs. Fortune, 60 Pac. 1086, and State ex rel Wallace vs. Equalization Board, 46 Pac. 266). As the opinion in the Fortune case shows that both cases turned upon constitutional provisions *only*, we take the liberty of quoting freely from it (the italics being ours):

"The learned Attorney General frankly states that the present proceeding practically amounts to a motion for a rehearing of the case of State ex rel. Wallace vs. State Board of Equalization, which was decided on September 28, 1896, and is reported in 18 Montana, at page 473, 46 Pac. 266. The question submitted in that case was whether the State Board of Equalization possesses the power to increase the total of the assessed valuations of the counties of the State. That question is now again presented, together with the question of whether such board has the power to increase or decrease the valuation of any specific *class or classes* of property above or below that fixed by the county boards as shown by the abstracts and statements transmitted to the State board. In the Wallace case this Court held that the State Board of Equalization has not authority to increase or decrease the total valua-

tion of the property in the State as shown by the abstracts transmitted to it by the county boards. The Attorney General earnestly and with ability argues that the former decision is erroneous. He insists that in the Wallace case the *constitutional provisions only* were considered, the statutory provisions touching the Board of Equalization not having been called to the Court's attention. It is apparent, however, that the decision was based upon the *limitations ordained by Sections 9 and 15 of article 12 of the constitution of Montana* in respect of powers of the Board of Equalization. * * * * * * *

The opinion sets out also Section 11 of Article 10 of the *Colorado Constitution, which, as to the subject then and now under consideration, differs not at all from Section 9 of Article 12 of our constitution.* The Court quoted liberally from the Supreme Court of Colorado in People vs. Lothrop, 3 Colo. 428, which interpreted said sections of the *constitution* of that state, and adopted the reasoning and the decision therein announced, saying: 'These comments by the Colorado court upon the *constitutional restrictions* placed upon the powers of the State Board of Equalization of that State apply with exactness and force to our constitution and the powers of the respondent board thereunder. * * * The Colorado decision was made in 1877, and Montana became a state in 1889. *Section 15 of Article 12 of our constitution was adopted from the Colorado constitution* after an interpretation thereof by the court of last resort in the parent state. *That interpretation is not clearly erroneous.* The presumption is, therefore, that the convention which framed the Montana constitution was 'conversant with and designed to adopt also' the interpretation previously given to the section in Colorado." * * * The learned Attorney General cites sections 3690, 3800-3808, of the Political Code as conferring upon the State Board of Equalization authority to do that which it attempted to accomplish; *but statutes cannot clothe the State board with power denied to it by the fundamental law.* After a careful examination and

consideration of the reasons advanced and the authorities cited, we are of the opinion that the conclusion announced in the Wallace case should not be disturbed or overruled. *Since it was decided two general elections and two sessions of the Legislative Assembly have been held, thereby affording opportunity for the people, if dissatisfied with the interpretation, to change the constitution so as to cure the evils of which complaint is made;* but no such amendment has been proposed. The demurrer is sustained, and a judgment will be entered dismissing the proceeding. Dismissed."

"BRANTLEY, C. J, *I concur in the foregoing opinion solely on the ground of stare decisis. If the question involved were a new one in this state, I would be in favor of disregarding the construction given to the section of the constitution by the Supreme Court of Colorado in People v. Lothrop, 3 Colo. 428, and followed by this court in State ex rel. Wallace v. State Board of Equalization, 18 Mont. 473, 46 Pac. 266, as demonstrably wrong.*"

It is beyond question that in the absence of constitutional provisions the Montana court would have declined to follow Colorado. The trend of the reasoning is that, taking the Colorado statute as it stood, independently of the constitution, the board might lawfully have exercised the power it claimed. And even though it felt bound by the constitutional interpretation, the Montana court followed Colorado reluctantly. The best it could say for the Lothrop case was that it was "*not clearly erroneous.*" That is to say, the court was doubtful of its soundness. And the learned Chief Justice frankly says that it is "*demonstrably wrong*;" and that he concurs on the sole ground of *stare decisis.*

If, then, the Montana court was dubious of the Lothrop case even under the constitutional restrictions and under a

statute far less flexible than our own, can it be doubted that it would have decided differently if unhampered by a constitution?

We think it thus clearly appears that, even though our statute had been adopted *verbatim* from Colorado, still the Lothrop case would not be binding upon this court. But in view of the striking and wide difference between the two statutes and the fact that we have no constitution, that case is not even persuasive.

It is important to remember at this point that in the Fortune case, supra, the Court called attention to the fact that two sessions of the Legislature had been held since the conclusion of the Court in the Wallace case had been announced, and that the people had thus been afforded opportunity to propose a change in the constitution if dissatisfied with the interpretation, but that no change had been proposed. In Arizona not only had the interpretation placed upon our statute by the Board of Equalization and other executive officers been acquiesced in for eighteen years, but our Legislature in 1901 re-enacted that statute without change, with full knowledge of the intertation theretofore placed upon it, thereby recognizing and adopting such construction and making it a part of the law itself. See authorities cited, supra, also—

Gilbert v. Craddock, 72 Pac. 869, at page 872.
Frost v. Pfeiffer, (Col.) 58 Pac. 150-1.

Other decisions following the Lothrop Case are equally inapplicable.

The case of People v. Ames, 60 Pac. 346, is wholly without application here. It merely decides whether a statute enacted in 1891, conferring power upon the State Board of Equalization in terms to "increase or diminish

the valuation of any or either kind, class or grade of property in any county as much as in their judgment may be necessary," etc., was repealed by one passed in 1899 providing that it should have the power to "increase or decrease the *aggregate* valuation of all taxable property, not to exceed in any year five per cent of such aggregate valuation, and only as an incident to such equalization." The court held that the latter act repealed the former, and that the action of the board in changing the valuation of *classes* of property was, for that reason, and because such action was in conflict with the *constitution* of the state, invalid. It is, of course, plain that under the statute of 1899 the board possessed no such power as it attempted to exercise, that statute confining it to action upon *aggregates* and as the constitution was held likewise to be violated, the Colorado court in this instance may have decided correctly. But what possible application can that case have here?

The case of Hacker v. Howe (Neb.), 101 N. W. 356, is not cited quite fairly by counsel. That case does *not* hold that the State board had no power to raise the aggregate, but only held that it could not do so "merely for the purpose of making such increase." In the paragraph succeeding the one selected and quoted by counsel, the Court holds that where the aggregate is raised as an incident to equalization (as in the case at bar) it is a legitimate exercise of power. We have previously herein considered this case.

The case of Poe v. Howell (N. M.), 67 Pac. 62, ought not to be cited as an authority. It is merely a judgment of a District Court of that Territory, and it assumes, incorrectly, we think, that the facts before the Supreme Court of New Mexico in First National Bank v. Territory,

65 Pac. 173, did not indicate that the aggregate valuation had been increased. A careful reading of the latter case convinces us that the aggregate was raised, and that the Court would have approved it had the point been squarely before it.

The Territorial Board of Equalization is not limited to the specific classification of property contained in Paragraph 3877, supra, but may Specify and Act upon subclasses such as patented mines, work-horses and saddle-horses.

This question has already been considered in our general discussion of the statute in question; but the following replies to questions submitted by the count below, after the hearing, for further argument, deal particularly with this phase of the case.

I.

Is the power and authority to add "patented mines" as a classification, derived solely from paragraph 3877 of the Revised Statutes?

The power to add patented mines, as such, to the assessment roll, is found in the general and oft-repeated authority to assess all property. The power to require patented mines to be returned in the abstracts furnished by the clerks of the boards of supervisors is derived solely from the paragraph mentioned, as it is the only paragraph relating to classification.

II.

Does the provision in said paragraph, "but the Territorial Board of Equalization is authorized to diminish or add to the above list," give authority for adding a sub-classification of real or personal property or both?

Unquestionably, if any effect whatever is to be given to the clause quoted, the Board has power to do both. The instant it is conceded that the legislature meant anything by the language quoted, the conclusion that the Board may do what is so plainly expressed is inevitable. The legislature certainly meant just what it has said. Any other construction would defeat the purpose and operation of the statute. The statute is remedial, and should be so construed as to make it effective.

III.

Has the Territorial Board of Equalization, under paragraph 3877, any power to further subdivide or classify any of the classes or lists therein specified by the legislature, or is such power to add thereto confined to new classes of property not specified therein?

It seems to us that there are two distinct inquiries involved in this question, and we shall so treat it. As to whether "the Territorial Board of Equalization, under paragraph 3877, has the power to further subdivide or classify any of the classes or lists therein specified," we say that the power given the Board to "diminish or add to" the list, authorizes it to entirely disregard the empirical classification given in the statute, and to create an entirely new one. It may "diminish" the list to the vanishing point. All the classifications would have then been merged into the residium designated as "all other property." Under the power to add to the list, and to require such other and different matters to be returned as it may deem advisable, it may make a new classification. The power is a continuing one and is not exhausted by one exercise of it. We answer this question, therefore, in the affirmative.

The second question, "Or is such power to add thereto confined to new classes of property not specified therein," we answer decidedly in the negative.

IV.

Is there a provision in the statute for the assessment of patented mines, as such, and if not, by what means may the increased assessment by the territorial board be given effect by the boards of supervisors?

If there is no provision for the assessment of patented mines, then of course the increased assessment by the territorial board cannot be given effect. Patented mines are property, and all property must be assessed, no matter by what name or designation it may be known. The supreme court of the territory decided, in Waller v. Hughes, 11 Pac. 122, that both patented mines and unpatented mining claims are taxable. They must be classified or named as something. The record shows that the former are assessed as "patented mines." Ordinarily they are not legal subdivisions, and are therefore listed by the owner, under the provisions of paragraph 3849, "by some description sufficient to identify" them. It has been the practice for many years to assess this class of property as "patented mines," as the most convenient and intelligent method of describing them, just as certain lands are designated as "grazing lands," "farming lands," etc. We have such classifications of land in this territory, and they are entirely proper. They serve to distinguish the land and identify it. There is such an obvious distinction between mineral and non-mineral lands, that the designation employed might well be said to be a natural one. The means of acquisition of mineral land is different from any other. Its uses are

different. Its values are more variable. Yet it is just as taxable as any other kind of property, and all of it has a measurable cash value. There is, then, a provision in our statutes for the assessment of "patented mines" as such.

V.

Do paragraphs 3849 and 3861 have a bearing upon the interpretation to be given to paragraph 3877?

We are unable to see wherein they do. The former relates to the manner in which the property-owner shall list his property to the assessor; the latter relates to the manner in which the assessor shall enter such property upon the assessment roll. As to the listing of real estate, he is directed, where it is without the limits of an incorporated town or city, to give the number of acres as nearly as can be conveniently ascertained, and the location and township where situate. The requirement that the number of acres shall be given goes to the quantity, merely, and not to the description or classification of the land. The list required to be made out by the property-owner, under paragraph 3849, does not require the acreage of lands to be returned, but, if it is not a legal subdivision, or is unsurveyed, to designate it by some description sufficiently to identify it. What more thoroughly identifies a patented mine than its name—the name under which title has been acquired to it? And it may be assessed by that name, and properly valued regardless of the acreage. And it may be classified and equalized, just as a farm well known by a certain name may be, whether any mention of acreage is made or not.

The first four questions practically present but the one inquiry as to the power of the Board of Equalization to

make new or additional classifications. Treating it in this sense, let us add the following suggestions:

Paragraph 3877 provides that the clerk of the County Board of Equalization shall make an abstract of the assessment roll; this abstract shall contain:

1. The whole number of acres of land, other than city and town lots, listed in the county, and the valuation thereof;
2. The value of the improvements on such whole number of acres of land;
3. The total valuation of city and town lots;
4. And the the valuation of the improvements thereon;
5. The whole number of miles of railroad within the county, and the value thereof;
6. The whole number of horses, and their total value;
7. The whole number of mules, and their total value;
8. The whole number of asses, and their total value;
9. The whole number of cattle, and their total value;
10. The whole number of sheep and their total value;
11. The whole number of swine and their total value;
12. The whole number of goats and their total value;
13. The gross amount of all other property.

These thirteen items constitute all the statutory classification. An abstract containing those items would be in full compliance with the requirements of the statute, unless there shall have been some modification of this list, ordered by the Territorial Board of Equalization.

And the statute expressly authorizes the board to modify this list. In what way may the board modify the list or change these requirements? The language of the statute is that the board is authorized—

1. To diminish the list; or

2. To add to the list, and

3. To require such other different or further matters to be returned.

The object of classification at all is to enable the board to more nearly approach a just equalization.

The greater number of well defined classes into which property can be divided, it is very obvious, the better the board may be enabled to find and correct inequalities of valuations.

Appreciating this, the legislature, to enable the board to meet exigencies arising out of an absolutely fixed, arbitrary and empirical classification, has authorized the board to change the classification prescribed by it, in at least three ways—

First—By adding to the list.

It might be argued and conceded, under this provision, that any added classes must be such as can be made of the unclassified residium of taxable property which for convenience we have numbered 13, being "The gross amount of all other property." We do not say that it is necessary to concede this, except indeed it be so in order to give effect to the final provision for modification.

Second—By diminishing the list.

This is plain enough. The list is diminished by omitting one or more of the items of classification. The property in any such omitted class or classes would then simply be included in that residium of "all other property." But the authority to modify the list does not stop here. Under these two provisions authorizing modification, diminution of or addition to the list, the board might leave the items prescribed by the statute unchanged, except as any may be omitted.

Third—The statute proceeds, and provides that the board may require such different or further matters to be returned.

Recalling that the matters are those abstracted from, and originally appearing in the assessment roll; that it is the abstract of matters taken from this roll; the language that the board is authorized "to diminish or add to the list, and to require such different and further matters to be returned as it may deem advisable," completely vests the board with power—

To diminish the list,

Add to it, or

Change or make different and further classification.

The legislature must have foreseen that merely adding to or taking from the list might not result in the best classification, so left it to the board to require a different or further one, as from time to time, enlightened by experience, it might deem advisable.

The use of the terms different and further indicates the power to change the list in any particular.

Otherwise, why should the words "to require such different or further matters to be returned" be used in this immediate connection? To what does different relate, if not to the matters contained in the abstract as specifically prescribed?

That the Legislature intended to give the Territorial Board complete power to modify the classification of taxable property is apparent from the language used.

That any itemized class was intended by the Legislature to be irrevocably fixed by its statement in the empirical classification presented in the statute, is instantly overthrown by the very first provision authorizing a modification of the list—that authorizing a diminution.

It seems to us plain, and not open to argument, that any one or more—or all—of the items of classification in the statute may be omitted. Of course, the mere omission of property from the classification cannot be construed as an exemption of that class of property from taxation. It would, as we have before suggested, be included within the "all other property." Remembering that the express power to add to the list is also given, it appears instantly that complete power of classification is given.

We may illustrate by supposing that the board should "diminish" the list by omitting the item, "The whole number of acres other than town or city lots." That that is authorized cannot be disputed. Then, if nothing further is done, "the whole number of acres of land, etc.," would become a part of "all other property." Now suppose the board should conclude to add a class of property, being prompted thereto by very obvious considerations of convenience, as "patented mines;" the statute expressly authorizes it. And in fact the board has so deemed its authority to be, for it has been its practice to do that which is at first view a sub-classification. It is simply the entire obliteration of a class—putting it out of existence—ignoring it altogether, as if it had not existed, and making independently, a new classification.

Can it be said that the power to add to the list and to require "further or different matters" to be returned, is limited to the mere sub-classification or subdivision of the kinds of property specified in the statue? We think that this would not only be a too strict, but an entirely unwarranted construction. The statute authorizes "further or different" matters to be returned, thus repelling any application of the doctrine of ejusdem generis. If only the word "further" had been employed, the narrower

construction might be permissible; but the use of the word "different" precludes it. "Different" cannot be the same. "Further" might be. So, if it be conceded that mineral lands were, in the legislative contemplation, different from the whole body of acreage lands, it must be for that very reason that the Legislature empowered the board to require such "different" lands to be returned, just as it may of cultivated and uncultivated, timber and grazing land.

The power of the territorial board to do the acts in controversy had never been challenged until 1905. Year after year, after 1887, it had raised largely and lowered slightly, the valuation of classes of property, raising in each year the total value, as returned from the several counties, and no question of its power had been heard. The farmer, the ranchman, the stockman, the merchant, the banker and the laborer, have all acquiesced in the board's action and have paid their taxes accordingly. It happens, however, that for the first time, the valuation of mining property is raised, and raised substantially. It is nowhere contended, however, that such property is, even under this action, raised to an equality with other property, nor is it, nor can it be contended, that as a class it is valued at anything approaching its cash value. But it has been raised. The board has attempted to make it share in some slight degree the burdens of taxation that are now and for many years have been almost wholly borne by other classes of property.

The only objection urged by the appellant is that the board has exceeded its power. The justice of the action of the board is not denied.

"It is merely a question of power." Has it then taken

eighteen years to discover that the board is without this power; and has it remained for the shock produced by increasing the valuation of mines to awaken the dead and sleeping taxpayers of Arizona to this fact? Or is it that the burden of taxation, new upon this class of property, so far as actual weight is concerned, is unbearably irksome, and is sought to be returned to the shoulders of the people who have always borne it, and whom the appellant evidenly believes always should?

After all, as appellant contends, "It is only a question of power."

The judgment of the Court below should be affirmed.

Respectfully submitted,

E. S. CLARK,
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of Counsel.

APPENDIX.

Extracts from Arizona Revised Statutes of 1901.

TITLE LXII.

REVENUE.

Chapter.

1. Levy of Taxes.
2. Property Liable to Taxation.
3. Assessment of Taxes.
4. Territorial Board of Equalization and Duties.
5. Duplicate Assessment Roll and Warrant for Collection of Taxes. Tax Collector.
6. Collection of Taxes and Duties of the Tax Collector.
7. Collection of Delinquent Taxes.
8. Collection of Taxes on Personal Property by Distress.
9. Poll Taxes.

CHAPTER I.

LEVY OF TAXES.

Amount of Tax Levy.

3831. (Section 1.) There shall be levied, annually, upon the real and personal property within this territory the following taxes: For territorial revenue, not exceeding thirty-five cents on each one hundred dollars of assessable property, and such further sum or sums as shall be necessary to meet the interest and payments of the territorial bonds as provided by law; and upon the same property the board of supervisors of each county is also hereby authorized and empowered to levy and collect for county purposes such additional and special taxes, not exceeding two dollars upon each one hundred dollars value of taxable property, and such further sum or sums as shall be necessary to meet the interest and payments of the county bonds as provided by law.

Levy of County Taxes. Assessment Rolls.

3832. (Sec. 2.) The board of supervisors of each county shall, on the third Monday in August of each year, assess the amount of taxes that shall be levied for county purposes, designating the amount which shall, on each one hundred dollars of taxable property, real and personal, be levied for such purposes; and shall add thereto the amount required by this title to be levied for territorial purposes. The board of supervisors of the respective counties shall, prior to the first Monday of February of each year, cause to be prepared suitable books for the use of the assessor, in which he shall enter the assessment rolls, as herein provided; and said books shall contain suitable printed or written heads, and be ruled to conform with the form of the assessment roll as provided in this title.

Lien of Taxes.

3833. (Sec. 3.) (Omitted.)

CHAPTER II.

Property Liable to Taxation.

Property Exempt from Taxation. Public Property. City and County Property. Charitable Institutions. Churches. Cemeteries. Property of Widows and Orphans.

3834. (Sec. 4.) (Omitted.)

"Real Estate" Includes what. Personal Property, How Assessed.

3835. (Sec. 5.) The term "real estate" whenever used in this title, shall be taken to mean and include the ownership of, or claim to, or possession of or right of possession to any land within the territory; and the claim by possession of any person, firm, corporation, association or company to any land shall be listed under the head of real estate: *Provided,* The term land as used in this section, shall not be so constructed as to include mining claims either lode or placer; the term personal property whenever used in this title shall be deemed and taken to mean, and it is hereby declared to mean and include all property of whatsoever kind or nature not included in the term real estate, as said term is defined in this section. All personal property in the hands of any trustee, agent, administrator, executor or receiver and all personal property mortgaged or pledged shall, for the purpose of taxation, be

deemed to be the property of the person who has the possession thereof. Whenever solvent debts are assessed, the person assessed may deduct therefrom his liabilities.

Property to be Assessed at Cash Value.

3836. (Sec. 6.) All taxable property must be assessed at its full cash value. The term "cash value," whenever used in this title, shall mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor. Land, and improvements thereon, shall be separately assessed.

Assessment of Shares of Stock.

3837. (Sec. 7.) (Omitted.)

To Whom Taxed.

3838. (Sec. 8.) (Omitted.)

Statement to be Given to Assessor.

3839. (Sec. 9.) (Omitted.)

Proceedings on Failure to Furnish Statement.

3840. (Sec. 10.) (Omitted.)

CHAPTER III.

Assessment of Taxes.

Bond of Assessor.

3841. (Sec. 11.) (Omitted.)

Oath of Assessor.

3842. (Sec. 12.) (Omitted.)

Deputies of Assessor.

3843. (Sec. 13.) (Omitted.)

Penalty for Neglect of Duty.

3844. (Sec. 14.) (Omitted.)

Suit on Assessor's Bond.

3845. (Sec. 15.) (Omitted.)

Assessor May Administer Oaths.

3846. (Sec. 16.) (Omitted.)

Assessment of Taxes. Property, How Listed. Furnishing Statement to Assessor.

3847. (Sec. 17.) Between the first Monday in February and the first Monday in June in each year, the county assessor, except as herein otherwise required of the territorial board of equalization, shall ascertain, by diligent inquiry and examination, all property in his county, real or personal, subject to taxation; and also the names of all persons, corporations, companies or firms, owning, claiming or having the possession or control thereof, and he shall then determine the full cash value of all such property, and shall list and assess the same to the person, firm, corporation, association or company owning or having the possession, charge or control thereof. The property of a ward shall be listed by his guardian; of a minor, having no guardian, by his father, if living, if not, then by his mother, if living, and if not, then by the person having the property in charge; of a beneficiary for whom property is held in trust, by the trustee. The property of every deceased person shall be listed by the executor or administrator. The property of persons or corporations whose assets are in the hands of receivers shall be listed by such receivers; of a body corporate, company, society or partnership, by its principal accounting officer, agent or partner. Property under mortgage or lease shall be listed by and taxed to the mortgagor or lessor, unless it be listed by the mortgagee of lessee. And all personal property in the hands of any trustee, agent, administrator, executor or receiver, and all personal property mortgaged or pledged shall, for the purpose of taxation, be deemed to be the property of the person who has the possession thereof. For the purpose of enabling the assessor to make such assessment, he shall demand from each person and firm, and from the president, cashier, treasurer, or managing agent of each corporation, association or company within his county, a statement, under oath or affirmation, of all the real estate and personal property within the county, owned, or claimed by, or in the possession or control of, such person, firm, corporation, association or company. If any person, officer or agent shall neglect or refuse, on demand of the assessor or his deputy, to give, under oath or affirmation, the statement required by this section, or if the owner of any property not listed by another person, shall be absent or unknown, the assessor shall fill out a list for such person, put-

ting therein all taxable property which he has reason to believe is owned by, in the possession or control of, said person, officer or agent liable to taxation. If the name of such absent owner is known to the assessor, the property shall be assessed in his, her or their name; if unknown to the assessor, the property shall be assessed to "unknown owners."

List of Property to be Given to Assessor.

3848. (Sec. 18.) It shall be the duty of every person owning or having charge of or under his control, property in this territory, subject to taxation, and as in this title provided, to make out and deliver to the assessor between the first Monday in February and the first Monday in June in each year a correct list of the same as required by law, whether he shall receive from the assessor a notice or demand to do so or not; and every assessment made against property subject to taxation shall be valid whether such notice or demand was received or not.

Contents of List.

3849. (Sec. 19.) The said list shall contain, first his lands by section or part of section, township and range, and where such part of section is not a legal subdivision or is unsurveyed, some other description sufficient to identify it, and his town lots, naming the town in which they are situated, and their proper description by number of lot and block or otherwise, according to the system of numbering in the town; second, the improvements on all such land and town lots; third, his personal property of every description or property held by him or under his control as an agent or in any fiduciary capacity. The list shall be signed and sworn to by the person making it, and the oath may be administered by the assessor or his deputy or by any other officer authorized to administer oaths.

Penalty for Furnishing False List.

3850. (Sec. 20.) (Omitted.)

Penalty for Refusing to Give List.

3851. (Sec. 21.) (Omitted.)

List to be Furnished When Person Has no Taxable Property.

3852. (Sec. 22.) (Omitted.)

Assessment of After Discovered Property.

3853. (Sec. 23.) (Omitted.)

Assessment of Water Ditches.

3854. (Sec. 24.) (Omitted.)

Assessment of Transient Herds of Sheep and Goats.

3855. (Sec. 25.) (Omitted.)

Penalty for Failing to File Affidavit.

3856. (Sec. 26.) (Omitted.)

Fees for Administering Oaths.

3857. (Sec. 27.) (Omitted.)

To Whom Assessed. Assessment of Railroads.

3858. (Sec. 28.) Except as in this title otherwise provided, all property shall be assessed in the name of the real owners, if the same can be reasonably ascertained, and if not, then in the name of "unknown owners," with a particular description of the property assessed sufficient for identification and the property of corporations or companies constructing canals, ditches, flumes, plank roads, gravel roads, telegraph lines, and similar improvements, shall be assessed to the company or corporation in the respective counties in which said improvements shall be situated; and railroad property shall be assessed as follows: On the first Monday in June in each year the territorial board of equalization shall meet at the office of the territorial auditor and they shall meet from day to day thereafter until the business of said board as hereinafter provided shall be accomplished. The duties of said board shall be to assess all taxable property in this territory belonging to railway corporations, except lots or parcels of real estate owned by the road within each county, and improvements thereon, and other improved property not connected with the operation of such road and located in any county which shall be taxed in the county where situate. The president, vice-president, general superintendent, auditor or general officer of any corporation operating any railway within this territory, shall furnish said board, on or before the first Monday in June in each year, a statement, signed and sworn to by one of such officers, showing in detail the whole number of miles of railroad in each county, also the whole number

of miles owned, operated or leased in the territory by such corporation making the return, and the value thereof per mile, with a detailed statement of all property of every kind and the value located in each county in the territory; second, also a detailed statement of the number and value thereof of engines, passenger, mail, express, baggage, freight and other cars or property owned by such railway, and on railways which are a part of lines extending beyond the limits of this territory; the returns shall show the actual proportion of the amount and full cash value of the rolling stock in use on the corporation's line which is necessary for the transportation of the freight and passengers, and the operation of the railroad in this territory during the year for which the return is made. The return shall also show the amount and value of property hereinafter designated in this section, and such further information shall be furnished as the board may in writing require. If said officers fail to make such statement, said board shall proceed to assess the property of the corporation so failing, and shall add thirty per cent. to the value thereof as ascertained and determined by the said board. The said property shall be valued at its full cash value, and assessments shall be made upon the entire railway within this territory, and shall include the franchise, right-of-way, road-bed, bridges, culverts, rolling stock, depots, station grounds, buildings, telegraph lines and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, said board shall take into consideration all matters connected with said road necessary to enable them to make a just and equitable assessment of said railway property. On or before the third Monday in June in each year said board shall transmit to the board of supervisors in each county through or into which any railway may run, a statement showing the length of the main track of such railway within the county, and the assessed value per mile of the same as fixed by a *pro rata* distribution per mile of the assessed value of the whole property herein specified, with a description of the whole of said assessed property within the county, by metes and bounds or other description sufficient for identification. And the said assessment and *pro rata* shall be made with reference to the value of the property belonging to said railway other than the main track situate in each county and municipality through or into which said railway extends. Where the railroad of a railroad corporation lies in several counties, its rolling stock must be apportioned between them so that a portion thereof may be assessed in each county, and each county's portion must bear to the whole roll-

ing stock the same ratio which the number of miles of the road in such county bears to the whole number of miles of such road lying in this territory. Said board of supervisors shall cause the county assessor to enter said statement with the said description upon the assessment roll of said county under the proper heads therefor, with the total value of said assessed property carried out. At the first meeting of the board of supervisors held after said statement is received by it, they shall make and cause to be entered in its minutes an order stating and declaring the length of the main track and the assessed value of such railway, lying in each municipal corporation within their county, through which their railway runs, as fixed by the said territorial board of equalization, which shall constitute the taxable value of said property for taxable purposes, and the clerk of said board of supervisors shall transmit a copy of said order to the city council or trustees of such municipal corporation. All such railway property shall be taxable upon said assessment by the same officers and for the same purposes as the property of individuals within such counties and municipalities. If any railway company or any person shall not be satisfied with the assessment of the property belonging to said company by the territorial board of equalization, it or they may appear before said board at its meeting in August and show why such assessment should be lowered or changed.

Collection of Taxes on Personal Property. Bond for Taxes. Collection of Taxes by Proceedings for Discovery of Property.

3859. (Sec. 29.) (Omitted.)

Assessor Liable for Taxes on Unassessed Property.

3860. (Sec. 30.) (Omitted.)

Assessment Roll, Must Contain What.

3861. (Sec. 31.) It shall be the duty of the assessor to prepare a tax list or assessment roll, alphabetically arranged in the book or books furnished him by the board or supervisors for that purpose, in which book or books shall be listed or assessed all the real estate and personal property within the limits of the county, and in said book or books he shall set down in separate columns:

1. The name of the taxable inhabitants, firms, incorporated companies or associations, in alphabetical order, if known; if

unknown, the property shall be assessed to "unknown owners;" and if any person shall refuse to make a statement of his property under oath, as required by this title, that fact shall be noted under his name.

2. All real estate taxable to each inhabitant, firm, incorporated company or association, described by metes and bounds, or by common designation or name, if situate within the limits of any city or any incorporated town, describing by lots or fractions of lots; if without said limits, giving the number of acres as nearly as can conveniently be ascertained, and the location and township where situate; all improvements upon public lands, describing as nearly as possible the location of such improvements: *Provided*, That when two or more parties claim or give a description of the same land, it shall be assessed to each party making such claim or giving such description, according to the estimated value of the claims of each.

3. The cash value of real estate and the improvements thereon.

4. The cash value of all improvements on real estate where the same is assessed to a person other than the owner of said real estate.

5. The cash value of all personal property taxable to each person.

6. The total value of all property taxable to each, and no further description of personal property than that required by the foregoing provisions of this section shall be needed or be requisite to render the assessment binding and effective; and the description of real estate shall be sufficient if the same can be readily identified thereby.

Form of Assessment Roll.

3862. (Sec. 32.) (Omitted.)

Plat of City or Town Blocks.

3863. (Sec. 33.) (Omitted.)

Assessment Roll, etc., to be Delivered to Board of Supervisors.

3864. (Sec. 34.) On or before the third Monday in June of each year the assessor shall complete his tax list, or assessment roll, and shall attach his certificate thereto, and deliver it and the map book, and all of the original lists of property given to him to the clerk of the board of supervisors, and which shall be filed in the office of said clerk, and as soon as

he receives said assessment roll the clerk of the board of supervisors shall give notice of the fact, specifying therein the time of the meeting of the board of equalization by publication in some newspaper, if there be one published in the county, and if none, then in such manner as the board of supervisors shall direct; and he shall keep the roll open in his office for public inspection.

Board of Equalization.

3865. (Sec. 35.) The supervisors of the county shall constitute a board of equalization, of which board the clerk of the board of supervisors shall be clerk.

Quorum of Board.

3866. (Sec. 36.) (Omitted.)

Meetings of Board of Equalization.

3867. (Sec. 37.) The board of equalization shall meet on the first day of July of each year and shall continue in session from time to time until the business of equalization is completed: *Provided,* however, That it shall not sit at its July meeting after the twentieth day of July, at which time it shall adjourn to meet on the third Monday of August following, at which meeting it shall have the same powers it possessed at its July meeting.

Powers of Board of Equalization.

3868. (Sec. 38.) Said board shall have power to determine whether the assessed value of any property is too small or too large, and it may change and correct any valuation, either by adding thereto or by deducting therefrom, if, in its judgment from the information then possessed by it, the value fixed in the assessment roll is too small or too large, whether such value was fixed by the owner or by the assessor; and if the board shall believe it to be right to add to the assessed value of any property, it shall cause this fact to be inserted in the advertised notice hereinafter provided to be given; but no assessment can be raised by the board unless it is included in such advertised notice.

Notice of Proposed Increase in Assessment.

3869. (Sec. 39.) Upon the adjournment of the July meeting of said board, and at a time not later than the fifth day

of August following the clerk shall cause to be published in the official newspaper of the county a notice, which shall be headed: "Increased assessments." It shall then state as follows: "At the July meeting of the board of equalization, it, with the information then possessed by it, believed that the following assessments on the following described property are each too small, namely:" And then shall follow a list of all property the assessed value of which the board believed to be too small at its July meeting. Said list shall be made out with the name of the one to whom the property is assessed, at the left hand side. Opposite the name shall be a description of the property that is thought by the board to be assessed too low, and opposite the description of the property shall follow the amount for which it is assessed. Each of these items shall be in separate columns, each column separated only by a line, the left hand one containing the name, the next one the description, and the last one the assessed value. These names in said notice shall be arranged alphabetically. At the end of the list shall be added this further notice: "The owners of the above property and all who are interested therein, are hereby notified that the board of equalization will meet at the office of the board of supervisors, in the court house of ..... county, Territory of Arizona, at nine o'clock in the forenoon of the third Monday in August, 19...., at which time and place they will take up, consider and determine whether the assessments above specified, or any thereof, shall be increased, when and where you can be present with such witnesses as you may bring and will be given a hearing. These assessments will be by the board taken up and considered in the order as they appear above, unless, for good cause first shown, the time is extended in any case." This notice shall be signed by the clerk of the board, and shall be published at least once each week to the time of the meeting of the board.

Board of Equalization to Meet in August.

3870. (Sec. 40.) The board shall meet on the third Monday of August following at nine o'clock in the forenoon of said day at the office, and shall remain in session not longer than the first day of September following. It shall at once proceed with the consideration of the assessments specified in the advertised notice, and as part of their proceedings, proof of the publication of said advertised notice shall be made, as in other cases, and filed with the board. This publication, so proven, shall be conclusive evidence in all cases that the ones named therein received due and legal notice that the property

described therein would be considered by the board at its August meeting, that it would then decide whether the assessed value thereof should or should not be raised, and that the one owning the property and all others interested therein had full apportunity to appear and resist such increase.

Board May Compel Attendance of Witnesses.

3871. (Sec. 41.) (Omitted.)

Decision of Board to be Final, Unless Appealed From.

3872. (Sec. 42.) The decision of the board as to whether the assessed value of any property shall be increased, and, if so, to what amount, shall be final, and shall not thereafter be questioned in any proceeding involving the amount of the taxes legally and equitably due thereon, unless an appeal is taken as hereinafter provided.

Assessor to be Present at Meeting of Board.

3873. (Sec. 43.) At all meetings of the board the assessor shall be present, if it be practicably convenient for him so to do; and it is made his duty to supply the board with all information possessed by him, and at any meeting of the board it shall require the assessor to place on the assessment roll and to assess any property subject to taxation not on the assessment roll; and, in absence of the assessor, it shall be the duty of the board to place any such omitted property on the assessment roll and to assess its value; and all such omissions so supplied shall be as effective, and the assessment shall be as legal and binding as though the assessor had done it while making his assessment roll.

Minimum Valuation of Real Estate.

3874. (Sec. 44.) No assessor, board of supervisors or the territorial board of equalization shall assess any real estate at a less valuation than seventy-five cents per acre, nor shall any board of equalization reduce the valuation of any real estate below the sum of seventy-five cents per acre.

Appeal from Decision of Board of Equalization.

3875. (Sec. 45.) Any person, firm or corporation who is dissatisfied with the amount of his, their or its assessment as fixed by the board of equalization may appeal from the action of said board to the district court of the county in which said

board holds its sessions, on or before the twentieth day of September following the adjournment of said board. Appeals shall be taken by a written notice to that effect to the chairman or presiding officer of the board of equalization and served upon the clerk of said board in the same manner as a summons in a civil action: *Provided*, That no appeal shall be taken unless the appellant shall, before taking the appeal, pay to the county treasurer of such county the full amount of taxes levied and assessed upon the property of the appellant by the board of supervisors in accordance with the valuation of such property as fixed by said board of equalization, which payment shall be accompanied by a written protest addressed to and filed with such county treasurer, setting forth the reasons why the person, firm or corporation making such payment deems the amount of such assessment erroneous or excessive. At the time of such payment the county treasurer shall deliver to the party making the payment a receipt for the amount so paid, which receipt shall be served upon the clerk of said board of equalization with notice of appeal, together with a copy of such protest. Unless such payment is made before the taking of such appeal, the appeal shall be dismissed. Immediately upon the service of such notice of appeal the clerk of the board of supervisors shall transmit such notice, receipt and copy of protest, together with a certified copy of the record of the proceedings of said board of equalization relating to the assessment of the person, firm or corporation taking such appeal, to the clerk of the district court of such county. For such services the clerk of the board of supervisors shall receive a fee of ten dollars, which shall be paid by the party appealing to said clerk at the time of the service of the notice of appeal, and unless so paid the appeal shall be dismissed. Upon the filing of said notice of appeal, and the certified copy of the records aforesaid, the clerk of the district court shall docket the appeal in the name of the appellant, as plaintiff, and the county, as defendant, and such appeal shall be heard by the court, without a jury, at its first session thereafter, unless both parties consent, in writing, to a continuance of such hearing. At such hearing the court shall hear evidence touching the actual cash value of the property assessed, and shall take into consideration its character, whether improved or not, its surroundings, and if it be productive, the amount of its annual yield, and from the evidence submitted shall determine the actual cash value of such property at the time of the assessment, and must render its decision at once unless both parties consent, in writing, to a longer time. The decision of the court shall be in writing, and a certified copy thereof shall be

delivered to the board of supervisors, who shall cause the assessment roll to be corrected accordingly. Upon the hearing of such appeal it shall be presumed that the valuation of the property fixed by the board of equalization is correct, and the burden of proof shall be upon the party appealing to prove to the satisfaction of the court that such valuation is erroneous or excessive. If it be determined by the court that the amount of such assessment is excessive, judgment shall be rendered in favor of the appellant and against the county for the amount of taxes which the court determines to be excessive, with interest thereon at the rate of seven per cent per annum from the time of such payment, and the costs of appeal, which shall be paid as other judgments against the county. If the court shall determine that the actual cash value of the property is greater than the valuation fixed by said board of equalization, judgment shall be rendered in favor of the county and against the appellant for the taxes due upon the value of such property as determined by the court in excess of the amount fixed by said board of equalization, which judgment shall, from the time of its rendition, be a lien upon all the real and personal property of the appellant within the county, and execution may be issued to enforce said judgment as in civil cases.

Powers of Court on Appeal.

3876. (Sec. 46.) The intent and purpose of the foregoing section is to have all property and subjects of taxation fairly assessed, at the value which would be realized therefrom by cash sale, but not for a forced sale thereof, in such manner as such property and subjects are usually sold; and for this purpose the power and authority conferred by the foregoing section upon the court shall be liberally construed. But said court is expressly prohibited from reducing the valuation of any property below the fair cash value of the property, or what the property would sell for cash.

Abstract of Assessment to be Furnished to Territorial Auditor.

3877. (Sec. 47.) Immediately after the adjournment of the board of equalization in June (July), the clerk thereof shall make an abstract of the assessment roll, containing the whole number of acres of land, other than town or city lots, listed in the county, and the valuation thereof, and the value of the improvements thereon; the total valuation of town or city lots and the value of the improvements thereon; the whole number of miles of railroad within the county, and the value thereof; the whole number of horses, and their total

value; the whole number of mules, and their total value; the whole number of asses, and their total value; the whole number of cattle, and their total value; the whole number of sheep, and their total value; the whole number of swine, and their total value; the whole number of goats, and their total value; the gross amount of all other property, and the total valuation of all taxable property; which abstract the clerk shall make out in duplicate, filing one copy in the office of the board of supervisors, and transmitting one copy forthwith to the territorial auditor; but the territorial board of equalization is authorized to diminish or add to the above list, and to require such different or further matters to be returned, as it may deem advisable; and if the said board of supervisors or clerk shall fail to forward to the territorial auditor the said abstract, the territorial board of equalization must obtain the abstract or so much thereof as is necessary from other and reliable sources.

Penalty for Failing to Furnish Abstract.

3878. (Sec. 48.) (Omitted.)

CHAPTER IV.

Territorial Board of Equalization and Duties.

Powers and Duties of Territorial Board of Equalization.

3879. (Sec. 49.) The territorial board of equalization shall consist of the territorial auditor, who shall be deemed to represent the judicial district in which he resides, and who shall be chairman of said board, and two other members who shall be appointed by the governor by and with the advice and consent of the legislative council for the term of two years, or until their successors shall be appointed and qualified, and three of whom shall constitute a quorum for the transaction of business, and they shall, before entering upon the duties of their office, take the statutory oath of office and file the same in the office of the secretary of the territory; said board shall be appointed, one from each of the judicial districts other than that in which the auditor resides. The members of said board shall receive in full of all compensations ten dollars per diem for the days actually in session and twenty cents per mile mileage in going to and from the place of meeting, said mileage to be computed by the nearest practical route (no constructive mileage shall be allowed.) In case of a vacancy in said board, the governor shall fill such vacancy by appointing a suitable per-

son therefor from the judicial district from which the vacancy occured. The governor shall, at the end of each session of said board, audit the account of the members thereof for per diem and mileage, and the same shall be paid out of the general fund of the territory upon warrants drawn by the territorial auditor upon the territorial treasurer therefor: *Provided*, That no member of said board shall receive a per diem for more than twenty days in each year. If any of said members of the territorial board of equalization shall fail to attend any of the meetings of said board, as required by law, it shall be the duty of the governor to appoint a competent person or persons to act in the place of said absent member or members during his or their absence, and the said person so appointed shall have the same powers and authority with the same compensation as if regularly constituting said board. They shall sit at the office of the territorial auditor on the second Monday in August of each year for the purpose of, and they are hereby authorized and required to examine the various assessments, so far as regards the territorial tax, and equalize the rate of assessment in the various counties whenever they are satisfied that the scale of valuation has been adjusted with reasonable uniformity by the different assessors and boards of equalization. The said board shall continue in session until the business before it shall be disposed of, and shall have access to and make use of all records in the office of the territorial auditor and territorial treasurer which will aid them in the disposition of such business. The said board shall keep a record of the business transacted by it, and are authorized to appoint a secretary at a compensation of five dollars per day while engaged in active service, such compensation not to exceed the sum of three hundred dollars in any one year; his account for compensation shall be audited by the chairman of said board from time to time as such service shall be performed by said secretary, and shall be paid in the same manner as the compensation of the members of said board is paid.

Manner of Equalization.

3880. (Sec. 50.) The said board shall ascertain whether the valuation of property in each county bears a fair relation or proportion to the valuation in all other counties in the territory, and on such examination they may increase or diminish the valuation of property in any county, as much as in their judgment may be necessary to produce a just relation between all the valuations of property in the territory; but in no instance shall they reduce the aggregate valuation of all the

counties below the aggregate valuation as returned by the boards of supervisors of the several counties. And said board shall at the same time fix the rate of taxes for territorial purposes which is to be levied and collected in each county.

Territorial Board to Transmit Territorial Tax Rate to Counties.

3881. (Sec. 51.) On or before the fourth Monday in August in each year, the territorial auditor shall transmit to the board of supervisors of each county a statement of the changes, if any, which have been made in the assessment by the territorial board of equalization, and the rate of taxes which is to be levied and collected within said county for territorial purposes, but if for any reason, the said board fails to sit, or the board of supervisors fail to receive the statement of the rate of tax ordered by said board of equalization, the rate of thirty-five cents shall be deemed to be levied, and the board of supervisors of each county in making up the tax list required by this title shall compute and carry out in the proper column a territorial tax at the rate aforesaid.

CHAPTER V.

Duplicate Assessment Roll and Warrant for Collection of Taxes—Tax Collector.

Duplicate Assessment Roll.

3882. (Sec. 52.) As soon as the board of supervisors of each county shall have levied the taxes as provided in this title, they shall add up the columns of valuation and enter the total valuation of each description of property on the roll, and shall cause a true copy of said assessment roll to be made, to be styled a "duplicate assessment roll" with territorial, county and other taxes and totals of taxes to each person or name, carried out in separate money columns, and shall carefully foot up the several taxes therein levied, and shall give to the county treasurer a statement thereof, who shall immediately charge the amount of such taxes to the tax collector, and the said board of supervisors shall charge the same to the county treasurer. The chairman of the board of supervisors shall annex thereto immediately under his hand a warrant commanding the tax collector to collect from the several persons named in said roll the several sums mentioned in the last column of such roll, opposite their respective names, on or before the third Monday of December then next. Which said "duplicate assessment roll" and also the plat or map book shall be delivered to the tax collector on or before the third Monday in September.

Board to Determine Amount of Tax Levy.

3883. (Sec. 53.) As soon as the board of supervisors shall have made the determination and estimate provided for in this title they shall proceed to assess taxes for the amount estimated, adding thereto, if in the counties wherein a percentage is allowed to the tax collector for collecting such taxes, the amount allowed according to law for collecting fees or expenses upon the taxable property of the county, according and in proportion to the individual and particular estimate and valuation as specified in the assessment roll for the year. In making such duplicate assessment roll the value and tax of each particular species of property, as assessed, shall be put down in separate columns, which shall constitute the tax roll for the year; and no informality in complying with the requirements of this title shall render any proceeding for the collection of taxes illegal.

Form of Duplicate Assessment Roll.

3884. (Sec. 54.) Said duplicate assessment roll may be in the following form: (Form omitted.)

Authority to Tax Collector.

3885. (Sec. 55.) (Omitted.)

Statement to be Furnished Tax Collector.

3886. (Sec. 56.) (Omitted.)

Notice to be Given by Tax Collector.

3887. (Sec. 57.) (Omitted.)

Publication of Notice.

3888. (Sec. 58.) (Omitted.)

Bond of Tax Collector.

3889. (Sec. 59.) (Omitted.)

Proceedings When Tax Collector Fails to Give Bond.

3890. (Sec. 60.) (Omitted.)

Tax Collector May Appoint Deputies.

3891. (Sec. 61.) (Omitted.)

CHAPTER VI.

COLLECTION OF TAXES AND DUTIES OF TAX COLLECTOR.

(Omitted.)

CHAPTER VII.

COLLECTION OF DELINQUENT TAXES.

(Omitted.)

CHAPTER VIII.

COLLECTION OF TAXES ON PERSONAL PROPERTY BY DISTRESS, ETC.

(Omitted.)

CHAPTER IX.

POLL TAXES.

(Omitted.)

EXTRACT FROM ACT 92, ARIZONA SESSION, LAWS, 1903, AMENDING CHAPTER VII OF TITLE LXII OF THE REVISED STATUTES OF 1901.

Section 86. If on the first day of January, A. D., 1904, any of said lands or town lots contained in said "back tax book" remain unredeemed, it shall be the duty of the tax collector to proceed to enforce the payment of the taxes charged against such tract or lot by suit in the courts of competent jurisdiction of the county where the real estate is situated, which same court shall have jurisdiction without regard to the amount sued for, to enforce the lien of the Territory, and for the purpose of prosecuting a suit for taxes under this chapter the collector shall have power, with the approval of the county board of supervisors, to employ such counsel as he may deem necessary, who shall receive, as fees in any suit, such sum, not to exceed twenty-five per cent. of the amount of the tax actually collected and paid into the treasury, as may be agreed upon in writing and approved by the county board of supervisors before such services are rendered, which same shall be taxed as costs in the suit and collected as other costs, and

no such attorney shall receive any fee or compensation for such services except as in this section provided, and it shall be the duty of the tax collector when suit shall have been commenced against any tract of land or town lot in said "back tax book" to note opposite said tract of land or town lot such fact, also against whom suit has been commenced.

Section 87. All actions commenced under the provisions of this chapter shall be prosecuted in the name of the Territory of Arizona at the relation and to the use of the tax collector, and against the owners of the property; and all lands owned by the same persons may be included in one petition and in one count thereof, for the taxes for all such years as taxes may be due thereon, and the said petition shall show the different years for which taxes are due, as well as the several kinds of taxes or funds to which they are due, with the respective amounts due to each fund, all of which shall be set forth in a tax bill of said back taxes, duly authenticated by the certificate of the tax collector and filed with the petition, and said tax bill or bills, so certified, shall be *prima facie* evidence that the amount claimed in said suit is just and correct, and all notices and processes in suit under this chapter shall be sued out and served in the same manner as in civil actions in district courts, and in case of suit agaist non-residents, unknown parties, or other owners on whom service can not be had by ordinary summons, the proceedings shall be the same as now provided by law in civil actions affecting real or personal property. In all suits under this chapter, the general laws of this Territory as to practice and proceedings in civil cases shall apply, so far as applicable and not contrary to this chapter.